# THE SECOND PART OF Actions for Slanders:

With a second Part of Arbitrements, together with directions and presidents to them, very usefull to all men.

To which is added Libels, or a Caveat to all infamous Libellers, whom these distracted times have generated and multiplied to a common Pest, like the Frogs and Locusts of *Egypt*, even almost to the ruine and destruction of their Mother *England*.

*Principi populi tui non maledices, &c.*
*Non facias calumniam proximo.*

To which likewise is added what defamations are determinable in the Ecclesiasticall Courts, what not.

As also certaine Queries or doubtfull Cases, collected by the same Author, out of our old and new Books, and put under their proper Heads or Titles, together with the Books cited *pro & contra*, very usefull and necessary for all Students in the Law

And to each particular Treatise severall and distinct Tables.

By *John March* of *Grayes Inne* Barrester.

London, printed for *Mathew Walbancke*, at *Grayes Inne* Gate 1642.

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# Actions for Slanders.

## The Second Part.

Mich. 25. *Eli.* in *Banco Regis*, adjudged, if a man call another perjured man, or a procurer of perjury, an Action upon the ...e lyes; but if he ſaith, that he is ...alſe forſworne man, or that he is a ...rmine of the earth, a falſe Bro...er, an Hypocrite in the Church; for ...ch words no Action will lye.

Mich. 25. *Eli.* in *B. R.* reſolved, ...at if a man bring an Action upon ...e caſe upon divers words, of which ...me are not ſufficient to maintaine

the Action, and upon some the Action well lyes, and the Jury assesse damages for all the words, this is a good matter in Arrest of Judgement, for the Jury assesse damages as well for those words for which the Action doth not lye, as for those for which the Action lyes; but if they doe not assesse damages for the words which are not Actionable, or upon the Evidence this be showne, that they doe not assesse damages for those words, there 'tis otherwise

Trin. 28. *Eli.* in *B. R.* if a man say of another that he is a man-slayer, and hath laine in wait to kill, adjudged an Action upon the case lyes for these words.

Hill. 32. in *Eli.* in *B. R.* an Action upon the case was brought for these words, Thou art a cousening Knave, for thou hast sold me a Saphir for a Diamond, and holden that it doth lye because he was a Goldsmith, and this is cause to impaire him in his living; and so one lies to another, who lives by buying and selling, though that he is not a Merchant,

dient, that he is a Bankrupt, a good Action upon the case will lye; but if a man saith to a Taylor, that he is a cousening Knave, because that he hath sold to him a Chaine for Gold where 'tis halfe Copper, and that he is a cousening Knave upon Record and hath been imprisoned for cousening, no Action will lye.

Hill. 32. *Eli.* in *B. R.* Sir *Edward Hastings* brought an Action upon the case against one for these words, Sir *Edward Hastings* hath procured a perjured Knave to seek my blood, resolved that the Action would not lye for those words, for that they are too generall, and doe not touch him in speciall; for he may so doe lawfully, for 'twas lawfull for him to seeke his blood if he were an offender in Felony, Murder, or Treason; and he might procure one that was perjured to give evidence of the truth of such Fact, and peradventure he had no knowledge of the perjury; but if he had said, that he had procured one to be perjured, it had been otherwise. And a case was cited, ad-

judged in the Kings Bench, where Mr. *Stanhop* brought an Action upon the case against one, who said, he got his living by swearing and forswearing; and adjudged that no Action will lye upon these words. So 'twas also adjudged that no Action will lye if one say of another, That he hath made false Records, and verifies them; but 'twas adjudged, that an Action will well lye against one who saith of another, that he hath procured one to lye in wait to murder him.

Mich. 29. *Eli.* in *B. R.* a man said of another, Thou art a Thiefe, for thou hast cut off the Eare-marke of my Sheep and set on thine owne, no Action will lye for these words.

Hill 29. *Eli.* in *B. R.* in an Action upon the case for words, for that the Defendant said to a Coronor, Thou art a cousening Knave, and hast coustoned *I. S.* of his Land, adjudged that the Action would not lye for any of these words being so generall, but if he had touched him in any speciall point of his office, then the

Acti-

Action wonld well have laine. And *Coke* ſaid that 'twas adjudged, that if a man ſay to one, Thou haſt robbed me, and haſt taken away my Evidence, that no Action will lye.

Mich. 40. & 43. *Eli.* in B. *Com.* an Action upon the caſe was brought by a Woman againſt the Portreiue of Graves Inne in Kent for theſe words; Thou keepeſt a Houſe of Bawdry, and the Jury gave foure pence damages; but the Juſtices would not have any Judgement entred for the Plaintiffe, but bid her goe to the Bawdy Court, which underſtood what Bawdry was, for they did not. Yet Reader you ſhall finde here immediatly after that it hath been often adjudged in this caſe, that the Action would lye, where one ſayes of a Woman, that ſhe keeps a Bawdy Houſe; and certainly there is no difference where one ſayes of a Woman, that ſhe keeps a Houſe of Bawdry, and where one ſaies that ſhe keeps a Bawdy-houſe: And the difference is as you ſhall finde, between ſaying of a woman that ſhe is a Bawd,

and saying, that she keeps a Bawdy-house.

*Read against Saul*

Mich. 40. & 41. *Eli.* in *C. B. Tel-verton* moved in Arrest of Judgement for these words; I heard it spoken that the Plaintiffe was one of them that was at *Purnells* Robbery, and that foure of them went to his house next morning; for it may be he was of *Purnells* side, or came by chance, and vouched Sir *Edward Hertberties* case in the Kings Bench; Sir *Edward Hertberty* fought my blood (see the like case before) whereupon Judgement was stayed after Verdict, for the Court said there, that it might be that he fought it by Indictment, or due course of Law. And another case there for these words; There is not a purse cut within forty miles of London, but the Plaintiffe hath his share in it; adjudged not Actionable, for the Court said, that it might be that part of the Money was his. *Walmesly Justice.* We had a case here which was this; one said of another, That he was a receiver of Thieves, and adjudged not Actionable, for it may

Sir *Edw. Hertberties* Case.

may be that he might doe ſo and not know it. *Anderſon* Ch. Juſt. where the words have a double conſtruction, we may as ſoone doe wrong as right, and therefore we ought to give no Judgement in ſuch a caſe unleſſe we will doe it ignorantly, which is a great fault in a Judge; therefore let Judgement be ſtayed untill the Plaintiffe ſhew cauſe, *Williams* prayed Judgement for the Plaintiffe the caſe of *Megge* againſt *Griffith* for theſe words; A woman told me ſhe poyſoned her firſt husband, adjudged Actionable. *Cardinalls* caſe of Graies Inne; If I had conſented to *Cardinal*, *I.S.* had been diſpatched out of the way; this was much ſtood upon, and yet Judgement was given for the Plaintiffe. Another caſe was this, one brought an Action for theſe words, He ſought my innocent blood (which I beleeve was *Herberties* caſe before cited) 26. of the Queene adjudged that the words were Actionable, and after Judgement was given in the principall caſe for the Plaintiffe, and 'tis ſaid by the Reporter,

*Megge* againſt *Griffith.*

*Cardinalls* Caſe.

that the damages being a hundred pound, were mitigated by the Judges to fifteene pound which he accepted, and well he might. For my part Reader, though I had this case from a good hand, yet for the reason given by the other side I am doubtfull of it; and so upon the same ground of *Hartberties* case before cited, and that not without ground, for *Hastings* case before cited (if I mistake not) is the same in effect with this, and adjudged point blanke contrary; and so *Hext* and *Yeomans* case, *Basch.* 26. of the Queene in the Kings Bench, *Coke, Lib.* 4. for my ground in *H. Hext* seeks my life, adjudged not Actionable upon the reason given before.

*Hext* and *Yeomans* Case.

Hill. 41. *El.* in *C. B.* an Action was brought by a Merchant for these words, Thou art a cousening Knave, and a Banckrupt Knave, *Ac eadem verba, aut alia iis similia sepius repetuit.* *Daniel* moved in Arrest of Judgement, but by the Court the first words were Actionable, and such damages as are given are alwaies supposed to be given for the materiall words;

and

and the repetition is voyd. But for my part (Reader) I am ſomewhat doubtfull, whether the words thus layed be Actionable or not; for without doubt upon the laſt words, (*aut alia iis ſimilia*) other words then the words layed in the Declaration cannot (upon a not guilty pleaded) be given in evidence, and the latter words makes the former words to be incertaine; for if a man ſhall bring an Action for words which are Actionable, as for ſaying that he called him Thiefe, or, *verba iis ſimilia*, certainly no Action will lye for the incertainty; but to this twill be ſaid, that it is true in the latter caſe, but in the caſe at Barre the former words are poſitively alleadged before in the Declaration, and the latter words are only words of repetition,

Trin. 41. *Eli.* in *C. B.* an Action upon the caſe was brought by *Huntſon* againſt the Biſhop of *Ely*, for publiſhing that he was his Villaine; the Biſhop juſtified the ſpeaking of the words, afterwards the Biſhopricke came to the Kings hands for contempt,

*Huntſon* againſt the Biſhop of *Ely*.

tempt, and I finde no further proceeding in the caſe. Heretofore 'tis cleare that no Action would have laine in ſuch a caſe; and the reaſon is evident, becauſe that he pretends title to him as his villaine. And agreeing with this are the Books cited before, but a *fortiori*, I conceive at this day no Action will lye, becauſe Villinage at this day is obſolete and out of uſe, and therefore can be neither prejudice nor ſcandall to a man,

*Sherrington againſt Ware.*

Mich. 41. & 42. *Eli. C. B.* It was holden by the opinion of the whole Court (*Anderſon* abſent) and ſo adjudged, that an Action upon the caſe will not lye againſt an Indicter of Felony, albeit the Felon be found not guilty; for *Glanvill* then ſaid, that it would breed a great miſchiefe in the Common-Wealth, if it ſhould be ſuffered, and many an honeſt man ſhould be puniſhed, when a Thiefe ſhould eſcape hanging by the favour of the Jurors. Upon this difference this Iudgement (as you ſhall finde afterwards) is Law, where the proſecution

cution was out of malice, where not; for though the profecution be lawfull, yet if it be out of malice, and not ſo much as *probabilis cauſa* for it, if the party be acquitted, an Action upon the caſe in nature of a conſpiracy will lye; for as a Thiefe may be ſpared by the favour of the Jurors, ſo an honeſt man may be very much prejudiced in his reputation by ſuch malicious profecution; and this is the common experience at this day.

Mich. 41. & 42. *Eli. C. B. Williams* moved in Arreſt of Judgement for theſe words; Thou art a forſworne Knave, thou wert forſworne at *Ilcon* Court (*innuendo*) the Court Leet there holden; and he moved that the Plaintiffe by his (*innuendo*) ſhould be no expounder of the Defendants meaning, neither that it ſhould ſtretch the words further then they were ſpoken, which the Court agreed; and then he ſaid the words will beare no Action, *Walmeſly* Juſt. thou art a perjured man will beare an Action, *contra* of forſworne, unleſſe he

he name *Westminster Hall*, or some such place where it shall be intended by the hearers, that he was forsworn in some Court. *Williams* there was this case in the *Kings Bench*, Thou art a forsworne man, thou wert forsworne in *White-Church* Court, and the *Kings Bench* adjudged them not Actionable. The Court, we doubt of this case, and all the Serjeants said, that truly 'twas so adjudged. *Anderson*, If one call my Copy-holder a forsworne man, for he denyeth my rent or service, I thinke this shall beare Action, but the *innuendo* is naught, for 'tis not traversable. *Walmesly* Just. One of you forged a *Subpœna* out of the Chancery (*innuendo*) the Plaintiffe. Judgement was stayed for this, because he which is grieved ought to be certainly defamed. *Williams*, Thou art, &c. thou wert forsworne in the *Kings Bench*, no Judgement was given, because it may be intended to the Court or Prison; but after Judgement was given in the principall case for the Plaintiffe, agreeing with those cases which I have cited; and 'twas said

ſaid in this caſe, that 33. *Eli.* one *Gardiner* of *Southwarke* had Judgement for theſe words; Thou art a forſworne Knave, upon divers motions againſt him which without queſtion cannot be Law, for 'tis point blanke againſt the Judgement in *Stanhops* caſe, in my Lord *Coke* often cited by me, and according to my Lord *Coke* it hath been often adjudged.

*Mowle* againſt *Skebington.*

Paſc. 42. *Eli.* in *C. B. Williams* moved in Arreſt of Judgement for theſe words; *A. B.* told me, that *Dicke* the Hoſtler and he ſtole ſuch a mans Horſes, for which he brought an Action, but did not alledge in his Declaration, *Vbi revera, A. b.* did not ſay ſo, and he ought to averre that, or elſe the Action will not lye, for here was ſuch a caſe in 10. *Eli.* in a *ſcandalum magnatum*, by the Lord *Lumley* much argued, I finde no Judgement in the caſe; but certainly the Law is with *Williams*, for without doubt if *A. B.* had told the Defendant ſo, the Action would not lye. Such averment you ſhall finde taken in the Lady *Morriſons* caſe cited by me, the reaſon

reason of the necessity of such averment is evident, because without it he tacitly admits that *A. B.* did tell the Plaintiffe as is set forth, and against his owne admission no Action.

*Coke*, llb. 4 Trin. 41. *Eli. Oxford* and his Wife brought an Action in *London* for calling the Wife of the Plaintiffe Whore, the Defendant removed this out of *London* by a *Habeas Corpus*; a *Procedendo* was prayed, because the Action was maintainable in *London* by the custome there for the said words, though not at the Common Law; by the Court he shall not have a *Procedendo* for such custome to maintaine Actions for brawling words is against the law; under favour, and with all due respect to this Judgement, the reason to me seemes very strange, for why this custome should be more against Law then their custome of forreigne Attachment, their custome to Arrest the Debtor upon Bond before the day of payment, to put in better security, and many other such like customes which are daily allowed to be lawfull I know no reason. And

Trin.

Trin. 17. *Car.* in *B. R.* a man was ſued in *London* according to the cuſtome there for calling of a woman Whore, upon which a *Habeas Corpus* was brought in this Court, and notwithſtanding *Oxfords* caſe, a *Procedendo* being prayed was granted; and 'twas ſaid by Serjeant *Pheaſant*, who was for the *Procedendo* (and ſo agreed by *Mallet* Juſt and *Bramſtone* Ch Juſt.) that of late time there had bin many *Procedendas* granted in this caſe in this Court.

## *Libels.*

READer, I have here added to *Actions for Slander*, certain caſes which have been adjudged touching Libells and Libellours, a learning to the ſame purpoſe, and as worthy the knowing as the former, eſpecially in theſe times of diviſion and diſtraction, in which ſo many baſe and ſcurrilous Libells are vented, even againſt Power and Authority, a thing deteſtable to all good and peaceable men, and utterly againſt the Word of God, as I ſhall make appeare hereafter. That I may therefore deterre men

men from this unconſcionable and diſhonourable way of Libelling, a thing ſo dangerous to the peace of this Kingdome (as by too too late experience we have found it) and ſo diſtructive to all ſetled government; I ſhall produce you certaine caſes that have been adiudged by the learned Judges and Sages of the Law upon Libells, by which you may ſee the hainouſneſſe of the crime, your owne danger, and know the better how to avoyd it. To which I ſhall likewiſe adde what defamations are determinable in the Eccleſiaſticall Court, and what not

*Coke*, lib. 5 fol. 225

Paſch. 3. *Jacobi*, in the caſe of *L. P.* in the Star Chamber in the ſame Terme, againſt whom the Kings Attourny proceeded upon his owne confeſſion *Ore tenus*, for compoſing and publiſhing of an infamous Libell in Meeter; by which *John* Arch-Biſhop of *Canterbury*. (who was a Prelate of ſingular piety, gravity, and ſcience, then dead) by deſcriptions, and circumlocutions, and not in expreſſe tearmes; and *Richard* Biſhop of *Canterbury* that then was, were traduced and

and ſcandalized; in which caſe theſe points were reſolved.

First, that every Libell (which is called, *Famoſus Libellus ſeu infamatoria Scriptura*) is made either againſt a private man, or againſt a Magiſtrate, or publique perſon; if it be made againſt a private perſon it deſerves a ſevere puniſhment, for though that the Libell be made againſt one only, yet this incites all thoſe of the ſame family, kindred, or ſociety, to revenge, and ſo tends by conſequence to quarrels, and breach of the Peace, and may be the cauſe of the effuſion of blood, and of great inconvenience. If it be againſt a Magiſtrate, or other publique perſon, this is a greater offence, for this concernes not onely the breach of the Peace, but the ſcandall of Government; for what greater ſcandall of Government can there be then to have corrupt or wicked Magiſtrates to be appointed, and conſtituted by the King to governe his Subjects under him? and a greater imputation to the State cannot be then to permit ſuch corrupt

men to sit in the sacred Seat of Justice, or to have any medling in or concerning the administration of Justice.

Secondly, it was resolved, that though that the private man or Magistrate be dead at the time of the making of the Libell, yet this is punishable; for in the one case this incites others of the same family, blood, or society to revenge, and to breake the Peace; and in the other the Libeller traduces and slanders the State and Government, which doth not dye.

Thirdly, it was resolved that a Libeller (who is called, *Famosus defamator*) shall be punished either by Indictment at Common Law, or by Bill if he denyes it; or *Ore tenus* upon his owne confession in the Starre Chamber, and according to the quality of his offence he may be punished by Fine, or Imprisonment, and if the case be exorbitant, by Pillory, and losse of his eares.

Here by the way I would have every one take notice, that though the Starre

Starre Chamber be taken away, yet that this vilde and deteſtable offence is not left diſpuniſhable; And I would likewiſe have all men obſerve (eſpecially in theſe times, in which Libells and Libellers ſo much abound, to the great diſhonour of our Nation, and to the diſturbance of our peace and government) what a great and defamatory puniſhment anſwerable to the offence the Law inflicts upon ſuch offenders: but I ſhall returne againe to the caſe.

Fourthly and laſtly, it was reſolved, that it matters not if the Libell be true, or if the party againſt whom it is made be of good fame, or of an ill fame; for in a ſetled ſtate of Government the party grieved ought to complaine for every injury done unto him in ordinary courſe of Law, and not by any means to reveng himſelfe, either by the odious courſe of Libelling, or otherwiſe.

And to aggravate the offence, it is ſaid as followeth in this caſe; That he that killeth any man with the Sword in combate is a great offender,

but a greater offender is he that poysoneth another; for in the one case, he that is openly assaulted may defend himselfe, and knowes his Adversary, and may endeavour to prevent it; but poysoning may be done so secretly that no man can defend himselfe against it, for which cause the offence is the more dangerous, for that the offender cannot easily be knowne. And of such nature is Libelling, it is secret, and despoyles a man of his fame (which ought to be more precious to him then his life) and *difficillimum est invenire Authorem infamatoriæ Scripturæ*, and therefore when the offender is knowne he ought to be severely punished.

Further, in this case you have set forth the difference of Libells, and how many severall waies they may be punished.

Every infamous Libell, *aut est in scriptis, aut sine scriptis*. A scandalous Libell *in scriptis* is, when an Epigram, Rime, or other writing is composed or published to the note or contumely of another, by which his fame or

dignity

dignity may be prejudiced; and such Libell may be published, 1. *Verbis aut cantilenis*, as where this is malitiously repeated, or sung in the presence of others. 2. *Traditione*, when the Libell, or any Copy of it is delivered over to scandalize the party. *Famosus Libellus sine scriptis* may be; First, *Picturis*, as to paint the party in any shamefull and ignominious manner. 2. *Signis*, as to fixe Gallowes, or other reproachfull and ignominious signes at the House of the party, or otherwise.

And it was resolved, Mich. 43. & 44. of the Queene in the Searre Chamber in *Hallwoods* case; That if any one finde a Libell (and would preserve himselfe out of danger) if it be composed against a private man, the finder either may burne it, or presently deliver it to a Magistrate; but if it concerne a Magistrate, or other publique person, the finder ought presently to deliver it to a Magistrate, to the intent that by examination and industry the Author may be found and punished.

Now I shall make it evident to you, that Libelling and Callumniation is an offence against the Law of God, for *Leviticus* 17. *Non facies calumniam proximo*, Exodus 22. Verse 28. *Principi populi tui non maledices*, Ecclesiastes 10. Verse 20. *In cogitatione tua ne detrahas Regi, nec in secreto cubiculi tui ditiiti maledices, &c.* Psal. 68. 13. *Adversus me loquebantur qui sedebant in porta, & in me psallebant qui bibebant vinum.* Job 30. Verse 7, & 8. *Filii stultorum & ignobilium, & in terra penitus non parentes, nunc in eorum canticum versus sum & factus sum eis in proverbium.* And it was observed that *Job*, who was the mirrour of patience, as it doth appeare by his intemperate words, became in a manner impatient, when Libells were made of him; and therefore it doth appeare how forcible this is to provoke impatience and contention.

And now Reader there are certaine Notes (as is observed in the close of this case) by which a Libeller may be knowne; *Quia tria sequuntur defamatorium famosum*: 1. *Pravitatis incrementum*,

tum, increaſe of lewdneſſe; 2. *Burſe detrimentum*, evacuation of the Purſe, and beggery: 3. And laſtly, *Conſcientiæ detrimentum*, ſhipwrack of Conſcience. Thus I have given you the caſe at large, full of excellent learning and directions, and well worth the knowing to the people of this age.

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*John Lambs Caſe.*

*John Lambe*, Proctor of the Eccleſiaſticall Court, exhibited a Bill in the Starre Chamber againſt one *William Marche*, *Robert Harriſon*, and many others of the Towne of Northampton, and againſt *Shuchburghe* and others for the publication of two Libells, and in this caſe it was reſolved: That every one that ſhould be convicted in the ſaid caſe, either ought to be a contriver of the Libell, or a procurer of the contriving of it, or a malicious publiſher of it, knowing it to be a Libell; for if one reads a Libell, this is not any publication

Mich. 8. *Ja.* in *Cam. Stellat.*

of it; or if he heare it read, this is not any publication of it, for before that he reads, or heares it, he cannot know it to be a Libell; or if he doth heare it, or read it, and laughes at it, this is no publication; but if after that he hath read or heard it he repeates it, or any part of it in the hearing of others; or after that he knowes it to be a Libell he reads this to others, this is an unlawfull publication of it; or if he doth write a Copy of it, and doth not publish it to others, this is no publication of the Libell, for every one that shall be convicted ought to be a contriver, procurer, or publisher of it, knowing it to be a Libell. But it is a great evidence that he publishes it, when he knowing it to be a Libell writes a Copy of it, except that afterwards he can prove, that he delivered it to a Magistrate to examine it, for then the act subsequent explaines his intention precedent.

See Reader, *Bracton, Lib.* 3. *tract de corona, cap.* 36. *fol.* 155. *Fiat non solum injuria, cum quis pugno percussus fuerit, verbe-*

*verberatus, vulneratus, seu fuistibus cæsus; verum etiam cum ei convitium dictum fuerit, vel de eo factum carmen famosum.*

Here Reader, as in the case before, you are taught what shall be a publishing of a Libell, and what not; and hence you are instructed how to demeane your selfe in case a Libell should come to your hands, of which you were neither the contriver, nor the procurer, of which you ought to take speciall heed, for that not only contrivers and procurers of Libells, but also publishers of the same, they knowing of them to be Libells are punishable as aforesaid.

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*Barrow against Lewellin.*

*Paul Barrow* preferred a Bill in the Starre Chamber against *Maurice Lewellin*, for writing unto him a spightfull and reproachfull Letter, which being brought, it appeared to the Court that it was sealed and delivered to his owne hands, and never otherwise published; and it was resolved, *Hob.* Rep. pa. 86. pl. 63.

solved, though the Plaintiffe in this case could not have an Action upon the case because it was not published, and therefore that it could not be to his defamation, without his owne fault of divulging of it; and all Actions of that kinde doe suppose, that in *audita quam plurimorum propalatione*, &c. yet that the Starre Chamber for the King did take knowledge of such cases, and punish them; the reason is, for that such quarrellous Letters tend to the breach of the Peace, and to stirring up of challenges and quarrels, and therefore the meanes of such evill, as well as the end are to be prevented.

Sir *Baptist Hicks* case; Pasch. 16. *Ja.* in *Cam. Stellat.* rule accord.

I conceive Reader, that a man in the case aforesaid cannot be Indicted at the Common Law, because there is no publishing of it to the defamation and scandall of the party, and that which may be the occasion of quarrels is not a sufficient ground for an Indictment, without an actuall breach of the Peace, no more then a man could be Indicted for sending a challenge to another, which

which yet was frequently punished in the Starre Chamber at the Suit of the King.

Reader, it is worthy of thy serious consideration that it is in the first case resolved, that it matters not whether the Libell be true, or whether the party against whom it is made be of good fame, or of ill fame; and the reason is, because that a Libell cannot be justified. And accordingly was the opinion of my Lord *Hobbart*, in *Lake* and *Hattons* case, where he saith expresly, that a Libell, though the contents be true, is not to be justified, but to discover it legally to some Magistrate or other that may have Cognisance of the cause is the right way, but saith he it may be justified in an Action upon the case, and thus much for Libels. *Hobb.* Rep. p. 353. Sect. 334.

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*Defamations determinable in the Ecclesiasticall Court.*

THis being a learning dependent upon the former, and indeed the same,

same, only varying in the Jurisdiction, I thought good to give you a touch of it, in which I shall cite you only a case or two which have been adjudged, which will be as a rule to all other cases of this nature.

Coke, lib. 4 fol. 20. A. B

Trin. 25. of the Queene in the Kings Bench between *Palmer* and *Thorpe*, it was resolved, that defamations determinable in the Ecclesiasticall Court, ought to have these three incidents. 1. That it concerne matter meerly spirituall, and determinable in the Ecclesiasticall Court, as for calling a man Heretick, Schismatick, Adulterer. Fornicator, &c. 2. It ought to concerne a matter meerly spirituall only, for if such defamation touch or concerne any thing determinable at Common Law, the Ecclesiasticall Judge shall not have Cousance of it. 3. Though that such defamation be meerly spirituall, and only spirituall, yet he which is defamed cannot sue there for amends or damages, but the Suit ought to be only for punishment of the fault, *pro salute animæ*.

And

And as to the first and second ground, the case in 22. *E.* 4. was cited to this effect; the Abbot of St. *Albans* sent his servant to a Feme Covert to come to his Master, and to speake with him; the servant performed his command, and upon this the woman came along with him to the Abbot, and when the Abbot and the woman were together, the servant (who knew the will of his Master) withdrew himselfe from them, and permitted them two to be alone in the Chamber, and then the Abbot said to the woman, That her array was grosse array; to which the woman said, That her array was according to her quality, and according to the ability of her Husband: and the Abbot (knowing in what women repose their delight) said to to her; That if she would be ruled by him, that she should have as good array as any woman in the Parish, and sollicited her chastity; when the woman would not consent to him, the Abbot assaulted her, and would have made her nought against her

22 *E.* 4. fol. 20.

her will, the which the woman would not ſuffer; upon which the Abbot detained her in his Chamber againſt her will, and to the intent &c. the Husband having notice of this abuſe to his Wife ſpake of all this matter, and ſaid; That he would have his Action of falſe impriſonment againſt the Abbot for that he had impriſoned his Wife: upon which the Abbot (adding one fault to another) ſued the innocent and poore man for defamation in Court Chriſtian, for that the Husband had publiſhed, that the Abbot had ſollicited the chaſtity of his Wife, and would have made her nought.

But upon all this matter diſcloſed to the Court the Husband had a *Prohibition*, becauſe that the Husband might have had an Action at the Common Law, for the aſſault and Impriſonment of his Wife, though that then he had not any Action, nor peradventure ever would; yet becauſe that the ſcandall determinable in the Eccleſiaſticall Court was upon all the matter diſcloſed, and mixt with

with matter determinable at Common Law, for this cauſe upon motion made by the counſell of the Abbot to have a conſultation in this caſe it was denied by the Court. See 18. E. 4. 6. 12. H. 7. 22. Regis, ver. 46, 47. & 54.

As to the third ground before laid downe, ſee the Statute *De Articulis, Cler. cap.* 1, 2, 3. and the Statute *De circumſpecte agatis, Anno* 13. E. 1. and F. N. B. 51. I. K. 52. D. M. 53. A. F. it appeares there, that if a Parſon ſue in Court Chriſtian for laying violent hands upon him, and to have the party Excommunicated, or a corporall puniſhment, and not for damages or amends that in ſuch caſe the Eccleſiaſticall Court hath juriſdiction, but the Plaintiffe may recover Coſts there; and if the Defendant in caſe of defamation be put to a corporall puniſhment, either for laying violent hands upon Clerkes, or the like; if the party will redeeme his Pennance, and agree to pay to the party damnified a certaine ſumme of money, there the party damnified ſhall have his Suit for it in the Court Chriſtian and no Prohibition lyes.

Accor-

22 E. 4. tit. Consultation. 5. Corbets case. Coke, lib. 7 fo. 44. A. Kemes case

According to the resolution afore said, it is resolved in 22. E. 4. Corbets case, that when the Spirituall Court shall have jurisdiction, it behooves that all the cause be Spirituall; as if a Parson Libell against a Lay man for Tithes imported, the Temporall Court shall have jurisdiction, for this is mixt with the temporalty, and thus much in short for defamations in the Ecclesiasticall Court.

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*Pasch. 3. Eli. in C. B. Rot. 527. Cocks against Mattelfelde.*

London: ss. WIll. *Mattelfeld nuper de Merye in Com. Staff. generosus alias dict. Will. Mattellfeld de Merye in Com. Staff. Gent. Sum fuit ad respondend. Thom. Cocks, alias dict. Thom. Cocks & Joh. Cocks, de placito quod reddat eis quadragint. libras, quas eis debet & iniuste detinet. Et unde idem Thom. & Joh. per Robertum Ebell Attorn. suum dic. quod cum predict. Will. vicesimo tertio die Aprilis, Anno Regni Domine Regni nunc primæ, apud London in Parochia beatæ Mariæ de Arcub. in*

*Wardo*

*Warda de Chester, per quoddam scriptum suum obligatorium concessisset se teneri eidem Thom. & Joh. in predict. quadragint. libris, solvend. eisdem Thom. & Joh. cum inde requisit. fuisset, predict. tamen. Will. licet sepius requisit. predict. quadragint. libras eisdem Thom. & Joh. nondum reddidit, sed ill. eis reddere contradixit, & adhuc contradicit, unde dic. quod deteriorat, sunt & dampn. habent ad valenc. decem librarum, & inde producit sectam. &c. Et proferunt hic in Cur. scriptum predict. quod debit. predict. in forma predict. testat. cujus dat. est die & Ann. supradict, &c.*

*Et predict. Will. per Edwardum Colbarne Attorn. sum. ven, Et defend. vim & injuriam quando, &c. Et pet. auditum script. predict. & ei legitur in hæc verba.* The condition of this Obligation is such, that if the above bound *William Mattelfeld*, and *Thomas Wright*, together with one *Mattelfeld* father of the said *William*, and one *Thomas Brindley*, and every of them, their Heires, Executors, Administrators, and Assignes, and every of them of their part and parties doe well and truly

obserue, performe, fulfill, and keepe the award, arbitriment, order, rule, and judgement of *Andrew Bowye* Gent. and *Robert Ethell* Arbitrators, indifferently elected and chosen by the said *William Mattelfeld*, and *Thomas Wright* on the one party, and *Thomas Cox*, and *John Cox* of the other party, to arbitrate, doome, judge, and award between the said parties, and upon all manner of matters, suits, quarrels, debts, and demands, had, moved, or depending betwixt the said parties, or betwixt any of them, or any of their servants or children, either in their owne right, or to the use or behalfe of any other person or persons from the beginning of the world unto the day of the making hereof; and especially for the determination of the right, interest, term, and title of and in the moyety of certaine Lands, Messuages, and Tenements, lying and being within the Lordship of *Mere*, in the County of Staff. now in the tenure and occupation of the aboveſaid *Thomas Cox*; as also for and concerning the parti-

tion of all such Lands, Messuages, Tenements, and Hereditaments which descended and came by right of inheritance to one *Joane Dart*, wife of *Jo. Darte*, and *Margeret Cox*, wife of the said *Thomas Cox*, daughters and Co-heires of *Margeret Cox*, and Sisters and Co-heires of *Jo. Cox* deceased; so that the said award be made and given up in writing unto the said parties, or to one of them by the said Arbitrators, before the Feast of St. *John Baptist* next ensuing this present date, that then this present Obligation be voyd, or else, &c. *Quibus lectis & audit. idem Will. dic. quod predict. Thomas & Joh. actionem suam predict. versus eum here. non debent, quia protestando dic. quod predict. Arbitrator. post confectionem scripti predict. & ante predict. Festum Sci. Joh. Baptisti, in conditione predict. superius specificat. nullum arbitrium, ordinationem, sive judicium, in premissis fec. pro plito; dic. quod Arbitratores predict. non deliberaverunt in script. inter ipsos Will. Mattelsfeld, Thom. Wright, Radum Mattelsfeld, Thom. Brindley, & presat. Thom. Cox, & Joh. Cox, aliquod*

*arbitrium, ordinacionem, sive judicium, prefat. Will. Mattelsfeld, Thom. Wright, Radum Mattelsfeld, & Thom. Brindley; sive eorum alicui, de & super premissis, in conditione predict. specificat, secundum formam & effectum conditionis illius, & hoc parat. est verificare, unde pet. judicium si predict. Thom. & Joh. actionem suam predict. versus eum habere debeant, &c.*

And upon this Plea the said Plaintiffes demurred in Law, to which the Defendant joyned, and this was adjudged no Plea, because the Defendant pleads, *Quod non deliberaverunt in scriptis*, and the condition is given up in writing, and therefore the Plea should be, *Quod non reddiderunt in scriptis.*

Mich. 27. *H.* 8 a man was bound in an Obligation to another to stand to the arbitrement of certaine persons, and the Arbitrators award that the Obligee shall make a Lease for terme of yeares to the Obligor, rendering a certaine Rent to the Obligee, &c. and the Obligee made the Lease according, and after the Obligor did not pay the Rent reserved

upon

upon this Leaſe to the Obligee, yet the Obligee, who was the Leſſor, cannot bring an Action of Debt upon the ſame Obligation againſt the Obligor, becauſe he doth not pay the Rent, and this by the opinion of *Shelly* and *Ingleiyeld* Juſtices cleerly, becauſe theſe words in the ſaid award, *viz.* rendring a certaine Rent, are not parcell of the ſubſtance of the ſaid award, but the making of the ſaid Leaſe is the effect of the ſaid award; and the Leſſor hath other remedy for the ſaid Rent, as to diſtraine. But if the Arbitrators had awarded that the Obligee ſhould make a Leaſe to the Obligor, and that for this Leaſe the Obligor ſhould pay to him a certaine ſumme of money, that if the Obligor doth not pay the ſaid ſumme, then the Obligee ſhall take advantage of this Obligation.

Paſch. 28. *H.* 8. *A.* and *B.* were bound in in an Obligation joyntly and ſeverally in 10. *l.* to one *C.* to ſtand to the arbitrement of certaine perſons, of all treſpaſſes, debates, &c.

and the Arbitrators award, that the ſaid *A.* ſhould pay to the ſaid Obligee, 16. s. and that the ſaid *B.* ſhould pay to the ſaid Obligee 3. s. 4. d. and in debt brought againſt the ſaid *B.* upon this Obligation the ſaid *B.* pleaded generally, that he had performed the ſaid arbitrement: and *Mountague* and *Ingleſfeld* Juſtices ſaid, that this was no good plea; but that the ſaid Defendant ought to have pleaded ſpecially how he had performed the award; and he ought alſo to have ſhewne how that the ſaid *A.* had performed the award, becauſe the ſaid *B.* is bound for the ſaid *A.* and every of them for the other.

Mich. 34 *H.* 8. in an arbitrement where the ſubmiſsion is *de jure titul. & poſſeſſione*, of certaine Lands betwixt the parties, the Arbitrators cannot award, that the Obligor ſhall cauſe the Lord of the Mannour of whom the ſaid Land is holden, to let to the Obligee the ſame Land by Copy. &c. or that he ſhall make a Stranger to make a releaſe to the ſaid Obligee of all his right in the ſame Lands, and this

this by *Baldwin* chiefe Juſt. of the Common Bancke, ſee the like *Anno* 28. *H.* 6. *fol. ultimo.*

Now (Reader) the reaſon of this caſe is evident, becauſe 'tis an award of a thing to be done by a Stranger, to inforce the doing of which lyes not in the power of the party, and therefore voyd; as you ſhall finde the Law to be in my firſt tract of Arbitrements, pag. 214, 215, 216, 217.

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Termino Sci. Mich. Anno 3. & 4 *Eliz.* Reginæ, Rot. 1324.

*ANdreas Meverell nuper de Applebee in Com. Leiceſt. generoſus ſum fuit ad reſpondend. Ioh Browne, de placito quod reddat ei 30. l. quas ei debet & injuſte detinet, &c. Et unde idem Ioh. per Will. Perriſon Attornatum ſuum dic. quod cum predictus Andreas quinto decimo die Septembris, Anno Regni Dominæ Reginæ nunc primo apud Lon-*

*don, in Paroch. beat. Marie de Arcubus in Warda de Cheap per quoddam ſcript. ſuum obligatorium conceſſiſſet ſe teneri eidem Ioh. in predict. triginta libris ſolvend. eidem Ioh. cum inde requiſit fuiſſet predictus tamen. Andreas licet ſepius requiſitus predictas triginta libras eidem Ioh. nondum reddidit ſed ill. ei hucuſque reddere contradixit, & adhuc contradicit. unde dic. quod deteriorat. eſt & dampnum het. ad valenc. decem. librarum & inde producit ſectam. &c. Et profert hic in Curia ſcriptum predictum quod debitum predictum in forma predicta Teſtatur Cujus dat. eſt die & Anno ſupra dict. &c.*

*Et predictus Andreas per Leonardum Stephenſon Attornatum ſuum venit & defend. vim & injuriam quando, &c. Et petit Anditum ſcript. pred. & ei ligitur, &c. Pet. etiam Auditum conditionis ejuſdem ſcript. & ei legitur in hec verba.* The condition of this Obligation is ſuch, that

that if the above bounden *Andrew*, his Executors, or Administrators, doe ſtand to abide, performe, fulfill, and keepe the Award, Arbitrement, Ordinance, and Judgement of *Michael Purifie* Eſq; Arbitrator, indifferently elected, named, and appointed and choſen by the aforeſaid parties to Arbitrate and Ordaine, Doome and Judge of, for, in, and upon the delapidations of the Parſonage of *Stretton* in the County of *Derby*, with the appurtenances being, and remaining in ruine and decay, by the fault, and after the death of *Robert Yeomanſon* Clerke, late Parſon there; and alſo in and upon all and ſingular Actions, Suits, Quarrels, Debts, Debates, Treſpaſſes, and Striſes had, moved, ſtirred, or now depending in varience betwixt the ſaid parties from the beginning of the world untill the day of the date hereof, ſo that the ſame Award be made,

made, ſealed, and delivered in writing unto either of the ſaid parties under the Seale of the aforeſaid Arbitrator, at or before the firſt day of October next comming after the date hereof, that then this Obligation to be voyd, or elſe to ſtand, and be in full ſtrength and vertue. *Quibus lect. & audit idem Andreas dic. quod predictus Joh. Acconem ſuam predict. verſus eum habere non debet quia proteſtando quod predictus Arbitrator poſt confectionem ſcripti pred. & ante predictum primum diem Octobris in conditione predict. ſpecificat non fecit aliquod Arbitrium ordinationem neque judicium inter partes predictas de & ſuper premiſſis in eadem conditione ſuperius ſpecificat. pro placito dic. quod predictus Arbitrator poſt confectionem ſcripti predicti & ante predictum primum diem Octobris non fecit & deliberavit in ſcriptis ſub ſigillo ſuo aliquod Ar-*

*bitrium*

horum ordinationem neque judicium inter ipsum Andream, & predict. Ioh. de & super premissis in conditione predicta superius specificat; Et hoc paratus est verificare unde pet. judicium si predictus Ioh. Ac coram suam pred. versus eum habere debeat, &c.

Et predictus Ioh. dicit quod ipse per aliqua preallegat. ab Ac coram predicta hend. precludi non debet quia dic. quod post confectionem scripti predict. & ante predictum primum diem Octobris in conditione predicta superiis specificat (viz.) vicesimo tertio die Septembris, Anno primo supradict. apud London, in Paroch. & Warda predict. predictus Arbitrator accep. super se onus Arbitrarii ordinationis & judicii predict. de & pro delapidationibus & aliis de casubus predict. Rectorie Horeorum, & aliorum edificiorum ordinavit & Arbitratus fuit inter ipsum Ioh. & pred.

Andream

Andream de & supra premissis in conditione predicta superius specificat. modo & forma sequent, (viz.) quod predictus Andreas Meverell ante festum Sci. Ioh. Baptisti tunc proximi sequent. reperaret & & emandaret cum acervubus clavis tegulis & calce ubi necesse requiret domum mansionalem predict. Rectorie & omnium aliarum domorum tegulat. ejusdem Rectorie sufficient. ad custag. & onera predict. Arbitratoris & cujusdam Ric. Browne, & etiam quod predictus Andreas inven. & imponer. unam notam soleam vocat. a Groundsill ex illo latere versus campum vocat, le Backside domus Mansional. immittend. vel imponend. antes vocat. Studdies & faceret parietes concraticas oblunaret & substrunaret voc. groundsilled latus illum per totum ad tunc in decasu existent. & etiam cooperire eandem cum tegulis & calice sufficient. ac quod

pre-

predictus Andreas reparare faceret in ist & maeremium in longo horres in omnibus locis inde ubi maeremium ad tunc fract. vel in decasu & etiam causaret horreum illud sufficient. esse tectum vocat. Thacked ubi necesse requiret ratione impositionis pred. maeremij & in omnibus alij locis quam talibus quales essent fract. pervent. tantum post mortem predicti nuper Rectoris & quod predictus Andreas haret striamina ad emendend. omnes predictos locos sic. fract. Et predictus Andreas emendaret & reperaret omnes mures predict. Rectorie qui fuerunt jndecasu in vita predict. Rectoris ante tunc in decasu & ruina prout sufficient cogitat. esse per predict. Arbitratorem & predictum Ric. Browne, & pro omnibus aliis decasibus Ianuar. osi osiorserarum palorum & murorum fact. & act. post mortem predict. nuper Rectoris quod predict. Andreas

Meverell,

Meverell, eſſet inde exoneratus predictum Arbitrium & quod predictus Ioh. Brown, exoneraret & indempn. conſervaret predictum Andream verſus, Will. Mote ad inst. Rect. Rectoriæ de ulterioribus demand. pro delapidationibus quam ille que ante & ſupra fur. appunctuat & aſſignat dict. Andree ad faciend. & agend. & inſuper predictus Arbitrator declaravit per Arbitrium ſuum predictum quod predictum Arbitrium ſuum non extenderet alicui aliæ materiæ vel demand. quam ſuper fuit mentionat & declarat totum pro & concernen eaſdem delapidationes vel decaſus pro ut per Arbitrium predictum plenius apparet quod quidem Arbitrium predictus Arbitrator poſt confectionem ſcripti prædicti & ante predictum primum diem Octobris (viz.) prædicto viceſimo tertio die Septembris, Anno primo ſupradict. apud London, in Paroch. & warda

pre-

dict. tam prefat. Andree quam dict. Joh. in Scriptis indentat. ſi-gillis ipſius Arbitratoris reddidit & deliberavit. Et idem Joh. dicit quod dict. ipſe performavit Arbitrium ordinationem & judicium predict. in omnibus ex ejus parte performand. ſecund. formam & effect. Arbitrii illius proteſtand. quod predictus Andreas poſt confectionem Arbitrii præd. & ante Feſtum Nativitat. Sci. Joh. Baptiſti tunc prox. ſequent non reparavit & emandavit cum aſſeculis clavis tegulis & calce predictum domum manſional prædict. Rectorie ubi neceſſe requiret ſecund. formam & effectum Arbitrii præd. Et hoc parat eſt verificare unde pet. judicium & debitum ſuum predictum una cum dampnis ſuis ratione detentionis debi illius ſibi adjudicari, &c.

Et predictus Andreas ut prius dic. quod predictus Arbitrator poſt confectionem ſcripti prædicti & ante predictum

dictum primum diem Octobris, tunc prox. ſequent non fecit & deliberavit in ſcript. ſub ſigillo ſuo aliquod Arbitrium ordinationem neque judicium int. ipſum Andream & prefat. Joh. de & ſuper premiſſis in conditione predicta ſuperius ſpecificat pro ut ipſe ſuperius allegavit & de hoc ponit ſe ſuper patriam & predictus Joh. ſiliter ideo preceptum eſt, vic. quod venire fac. hic a die ſci. Mich. in unum menſem 12, per quos, &c. Et qui non, &c. ad recognitionem, &c. qui tam, &c. retourn. Octab. Hillarii.

Poſtea die & loco infra content. coram Jacobo Dyer Mil Capital. Juſtic. Domine Regine de banco aſſociat, ſibi Joh. Farewell per formam Statuti &c. ven. tam infra nominat. Joh. Browne, quam infra ſcrip. Andreas Meverell per Attorn. ſuos infra content. Et jure jur. unde ſcil infra fit mencio exacti ſimiliter ven qui ad veritatem de infra content. dicend.

electi

[illegible] juriat & jurat dic. super sacrum. [illegible] quod infra nominat. Michael [illegible]ey post confectionem script. infra [illegible]ificat & ante infra script. pri[illegible] diem Octob. viz. viceſimo tertio [illegible] Septembris, anno Regni Domine, [illegible]. Regine nunc primo fecit & in[illegible]script. ſigillo ſuo delibavit quoddam arbitrium inter prefatum, Joh. Browne armig. in nomine & pro parte cujuſdam Will. Mote, ad tunc futuris de Stretton infra nominat, ex una parte & prefat. Andream Meverell gener. executorem infra content. Roberti Tomanſon, Clicim super Rector de Stretton predict. de & pro delapidationibus & aliis defectis ejuſdem Rectorie Horreorum & aliorum edificiorum ibid. tenor cujuſquidem in hec verba. The Award and Order made at Stretton [illegible]le Feild by me Michaell Pureſye Arbitrator, indifferently elect and [illegible]ſen betwixt John Browne Eſq; [illegible]he name and for the behalfe of

one *William Mote* now Parson of *Stretton* aforesaid of the one party, and *Andrew Meverell* Gent. Executor of one *Robert Yeomanson* Clerke, late Parson of *Stretton* aforesaid, of and for the delapidations and other decay of the same Parsonage, Barnes, and other buildings there the 23. day of September, in the first yeare of our Soveraigne Lady Queene *Elizabeth*; first I the said *Michaell* order and award, &c. *Ut supra sed utrum Arbitrium predictum per prefat. Mich. Pursey inter eosdem Ioh. Browne, in nomine & pro parte predict. Will. Mote & Andream Meverell, modo & forma predict. factum & delibatsit aut in lege adjudicari debeat aliquod Arbitrium ordinationem sive judicium inter prefat. Ioh. & Andream de & super premissis fact. & in scripto sub sigillo suo delibat, nec ne eidem jur. petunt. advisament. Cur. &c. Et si super*

*mate-*

...rium predict. videbitur eidem ... quod Arbitrium predict. per ...fat. Mich. in forma predicta ...tum & delibat. sit aut in lege ...judicari debeat Arbitrium ordi...tionem sive judicium inter prefat. ...h. & Andream de & super pre...missis factum & in script. sub sigillo ...a delibat. tunc iidem jur. dicunt ...per factum suum quod predictus ...arbitrator, post confectionem scripti ...infra content. & ante infra con...tent. primum diem Octobris, fecit ...& deliberavit in script. sub sigillo suo ...predictum Arbitrium ordinationem ...& judicium inter ipsum Andream ...prefat. Ioh. de & super premissis ...conditione infra script. interi...us specificat pro ut predictus Ioh. ...Browne interius allegavit, & assid. ...dempna ipsius Ioh. Browne, &c. ul...terius, &c. ad 3. s. 4. d. Et pro missis & custagiis illis, ad 53. s. 2. d. &c. ...& super totam materiam predi...ctam videbitur, eidem Cur. quod Ar...bitrium

*bitrium predictum per pref. Michem in forma predicta fact. & delibat. non sit necin lege adjudicari debet Arbitrium ordinationem neque judicium inter prefatum, Joh. & Andream de & super premissis factum & in script. sub sigillo suo delibat. tunc idem jur. dic. super sacrum suum quod predictus Arbitrator, post confectionem scripti predict. & ante primum diem Octobris non fecit & delibavit in script. sub sigillo suo aliquod Arbitrium ordinationem neque judicium inter ipsum Andream & prefatum Joh. de & super premissis in conditione predicta interius specificat pro ut predictus Andreas interius allegavit, &c.*

And the opinon of the Court was, that this was a voyd Arbitrement, and the matter was well debated and argued by the Serjeants and Justices, and because that this Arbitrement was contrary to the said submission, Judgement was given, that the Plaintiffe, *nihil capiat per billam.*

This very case I doe confesse I have cited before which is reported by my Lord *Dyer*, as you shall finde in my first Tract of Arbitrements; that which occasioned me to cite it againe in this place was the pleadings which I found at large taken and reported (as they are here) by Serjeant *Bendlowes* in his Reports which no doubt may and will be usefull to Readers. And because the Reporter is so short, and so generall in the reason of the Judgement, I thinke it will not be amisse to light you in the darke, to shew you the things insisted upon, and the reasons in a more particular way of the Judgement, which were these; The Parties were bound to stand to the award of *A.* for delapidations, &c. and all other Suits, quarrels, &c. *Item* said, the said award were made &c. who arbitrates this: the award of *A.* indifferently chosen by *I.* for the behalfe of the Obligor of the one part, and the Obligee of the other part, &c. and after he makes an award concerning the delapidations,

with a protestation that he would not meddle with the rest.

And here two things were insisted upon; First, whether the award in this case were betwixt the parties or no, because 'tis said the award of *A.* &c. chosen by *I.* for the behalfe of the Obligor, &c. and I conceive the better opinion in my Lord *Dyer*, fol 216, 217. to be, that is was because I was not a party to the award, but only a deputy or factor &c.

The next thing was, whether the award being made of part only, with a protestation that he would not meddle with the residue were good or not; and in this case the opinion of the Booke is (agreeing with what I have said before) that the award is nought, because it did not extend to all the points in the submission, viz. to the Suits and Quarrels, &c. and by his protestation not to meddle with them; he hath disabled himselfe to be an Arbitrator in the premises, because he refused to make an Arbitrement according to the submission of the parties, who chose him

him for to arbitrate conditionally, *&c. supra, viz.* So that the same award, &c. which is as well of Suits and Quarrels, &c as of delapidations &c. Sir you have here a more full account of the grounds of the aforesaid Judgement, which I hope will not be taken amisse, because *vis repetit*, in regard the reason given by *Benlowes* was too generall, and too difficult for weake Judgements to discover, though better might; and if the latter might condemne me, yet I am confident the former will not.

Note (Reader) these cases of Actions for words, as also for Arbitrements, which I have here added, being applyed to the grounds laid downe in my first severall Treatises, and their reasons examined, will according to the severall cases be either vindicated or refuted.

*Circumstances to be looke into in submission; first, that it be in writing.*

NOw that I have set forth the Law of Arbitrements, as also

the persons and things necessary in every Compromise; 'tis fit to consider such other circumstances as be requisite in the same.

Three things besides the persons and things ought to be observed in every submission.

First, that it be made by writing with the parties Covenants, or Bonds to bind their Heires and Executors to performe the award which shall be thereupon made, that the Arbitrators may know their power, and the parties how farre they are subject to their sentence and determination; and also lest their labour and judgement therein should be frustrate for want of meanes to compell the execution of the same; which may fall out in many cases where the submission is by word, as appeares by the Law of Arbitrements; hereby likewise will be prevented confusion, and incertainty, the certaine and unavoydable consequents of all transactions and agreements not committed to writing

*Of the power given to Arbitrators.*

Secondly, 'tis convenient that the ſubmiſsion arme the Arbitrators with ſufficient authority to doe all things neceſſary for the ending of the controverſies, as to appoint times and places for their meeting, to examine and decide the matter compromitted, and to bring the parties with their proofes, evidences, and witneſſes thither together before them, and to puniſh the perſons defective, and to expound and correct ſuch doubtfull ſentences and queſtions as may ariſe upon their award inconvenient to either parties, contrary to equity and the Arbitrators intention; which inconveniences could not by them be foreſeene at the making of the award, as it often happens.

*Of time and place.*

Thirdly, that by the ſubmiſsion, convenient time and place be appointed

pointed for the giving up of their award to the parties or their Attornies, Deputies, or Assignes, lest the parties should otherwise be kept long in suspence, and expectation, with vaine hope of an endlesse end; and that the Arbitrators may before the set time finish their award; for whatsoever they doe arbitrate after that time is voyd, as you finde in the Law of Arbitrements. And now I shall set downe some few presidents, (usefull for most men) of deeds of submission to awards, and covenants to performe the same; as also conditions of obligations to that purpose; and certaine formes of Arbitrements thereupon made, a deed of submission may be made as followes.

*An Indenture of submission to an award, with Covenants to performe the same.*

THis Indenture made, &c. between *A. B.* of the one party and *C. H.* of the other party witnesseth; that

that the said *A. B.* and *C. H.* doe by these presents willingly compromit, and submit themselves, and either of them to the award, arbitrement, order, rule, doome, and judgement of *A. B.* and *C. H.* Arbitrators, indifferently named, elected, and chosen by the said parties to arbitrate award, order, decree, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accounts, Trespasses, Controversies, Debates, and demands whatsoever had, made, moved, depending, or accrued, or which might have been had, or moved between the said parties at any time or times before the date hereof (except one Action of Debt, &c. depending between the said parties in the Kings Majesties Court of Common Pleas, or before &c. and except one debt of 10 l. due to the said *A. B.* by the said *C. H.* for the price of certaine corn, &c. and except all Lands and Tenements of the said *A. B.* and such like exceptions,) &c. So alwaies that the same Arbitrators doe make their award,

award order, and judgement of and concerning the Premises, to be made by writing indented under all their hands and Seales on this side, and before the tenth of *June* now next ensuing, and one part of the same deliver, or cause to be delivered by the said Arbitrators to the said *A.* or his certaine Attorney, or Attornies in that behalfe requiring the same the said tenth day of *June* now next comming, at or in the Parish Church of *R.* in the said County of *Yorke*; and the other part of the said award to the said *C. H.* his Attorney, or Attornies, Deputy, or Assigne, requiring the same at the said day and place; and so alwaies that the said Arbitrators doe not by the said award order, or appoint any act or acts, thing or things to be done, or performed by and to any person or persons, other then to or by the said parties to these presents, their Heires, Executors, Administrators or Assignes, or some of them, and not to, or by any stranger or strangers to this present submission. And

the

the said A. B. and C. H. and either of them for themselves, their Heires, Executors, and Administrators, and the Heires, Executors, and Administrators of either of them, doe by these presents mutually covenant, conclude, promise, and agree to and with the other his Executors, and Administrators, and every of them, that neither they, nor either of them will at any time hereafter revoke the Authority hereby given to the said Arbitrators, nor discharge them, nor either of them of the said faculty or power of Administration; and that they, and either of them, and the Heires, Executors, Administrators and Assignes of either of them, on their severall parts shall, and will well and truly observe, performe, fulfill, and keep all and every clause, sentence, article, submission and agreement in these presents mentioned on his or their part to be performed and kept, according to the tenour, true intent, and meaning of the same; In witnesse whereof we the said parties

to

to these presents have interchangeably set to our hands and Seales the day and yeare above written.

Here we may take notice that the submission is conditionall, *Ita semper quod, &c.* so alwaies that the award be made concerning the premises, by deed indented under their hands and Seales before the tenth of *June, &c.* and in this case the award must be of all the things submitted, and agree with the submission in every particular circumstance of it, or else it will be voyd in the whole because tis conditionall, otherwise it would be where tis not conditionall. as you may finde in the Law of Arbitrements, pa 181. 89. 196.

Another conditionall clause in this submission (not usuall) is very observable, which is this, so alwaies that the said Arbitrators doe not order &c. any Act &c. or thing &c. to be done, to or by a Stranger. In this case I doe conceive, by reason that tis conditionall, if they shall award contrary ie will avoyd the whole award: otherwise it would be,

submission were not conditio-
for in such case it would be
only as to the Stranger, and
to the parties, as it is in the Law
Arbitrements.

*Of binding the Parties to performe the award.*

He parties may submit them-
selves to award by obligation,
condition according to the ef-
of the submission, but that seem-
dangerous, because so they may
a trifle hazard the whole penalty
the Bond, which were too mi-
chievous; but to this it may be truly
it will the rather ingage to the
formance of the award, and
reby determine Controversies,
which is the sole aime, scope, and
of Arbitrements; and therefore
certainly is the best and most
proved meanes which is most like-
and probable to effect its end, and
such a condition it may be made
followes.

The

*The condition of an Obligation to performe an award.*

THe condition of this Obligation is such, that if the above bounden *A. B.* his Heires, Executors, Administrators and Assignes, and every of them doe, and shall on his and their part and behalfe well and truly stand to, obey, performe, fulfill, and keep the award, arbitrement, order, rule, dome and judgement of *S. I.* and *W. K.* Arbitrators indifferently elected and chosen, as well on the part of the said *A. B.* on the one party, as on the part of the above-named *C. D.* on the other party, to arbitrate, award, order, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accompts, Trespasses, Controversies, Debates, and Demands whatsoever had, moved, depending, or accrued, or which might have been had or moved between the said parties at any time or times before the date hereof,

hereof (except one Action of *Ejectione firmæ*, depending between the said parties in the Kings Majesties Court, commonly called The Kings Bench, as by the Records thereof in the same Court remaining it doth and may appeare; and except out of this submission all Lands and Tenements of the said *A. B.* or any like exception) so alwaies that the same award, arbitrement, order, and judgement of and concerning the premisses be made by writing, indented under all their hands and Seales before such a day next ensuing, and one part of the same delivered, or caused to be delivered by the said Arbitrators to the said *A. B.* or his certaine Attorney, or Attornies, Deputy, or Deputies in that behalfe, requiring the same the said day, at, or in the Parish Church of *L.* in the said County of *Y.* and the other part of the said award be likewise delivered by the said Arbitrators to the said *C. D.* or his certaine Attorney, or Attorneys, Deputy, or Deputies in that behalfe requiring the same at

the ſaid day and place. And ſo that by vertue or occaſion of the ſaid award, neither of the ſaid parties, nor the ſeverall Heires, Executors, or Adminiſtrators of them, or any of them be to doe any act or thing, to, or by any Stranger to the ſame award, and to theſe preſents: and ſo as the ſaid *A. B.* doe not diſcharge the ſaid Arbitrators before the ſaid time; that then this preſent Obligation to be utterly voyd and of none effect, or elſe to ſtand, remaine, continue, and be in full ſtrength and vertue.

Upon this Condition I ſhall only obſerve this (which I might likewiſe have done before upon the ſubmiſſion by deed of Covenant) that if the Arbitrators ſhall award any thing touching the things excepted, that in ſuch caſe I doe conceive the whole award is voyd becauſe 'tis conditionall, and ought to be the ſame award, and made concerning the premiſes not excepted, which in that caſe 'tis not; otherwiſe it would be if the Arbitriment were not conditionall,

all, for in ſuch caſe it would be voyd only as to the things not within the ſubmiſsion; *tamen quære* in the former caſe, becauſe tis an award *de promiſſis*, and more.

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*Of the condition to performe an award of Lands.*

AND if the award be concerning a title to Land, the words in the condition may be thus:

As well of, for, and concerning the right, title, intereſt, uſe, poſſeſsion, and demand of and in the Mannour of *S.* with the appurtenances in *S.* in the ſaid County of *T.* and all Lands, Tenements, and other Hereditaments, with the appurtenances in *S.* aforeſaid, in the occupation of the ſaid *A. B.* and his Aſsignes; as of and upon all Actions, Treſpaſſes, Suits, Quarrels, Debts, Duties, Debates, griefes, inconveniences, and demands had, moved, ſtirred, or depending between the ſaid parties concerning the ſaid Mannour, Tene-

ments, and premiſſes, and any part thereof. And alſo, if the ſaid *A. B.* before the Feaſt of *P.* now next comming, doe ſhew unto the ſaid Arbitrators all ſuch writings as he hath concerning the ſaid Mannour and Premiſes, at ſuch time and place as the ſaid Arbitrators ſhall appoint for the ſight thereof. So alwaies that, &c. *ut ſupra*, That then &c. *ut ſupra*.

Upon this condition I ſhall only obſerve thus much; that as the former was a ſubmiſſion generall conditionall, ſo this is a ſubmiſſion ſpeciall conditionall, which difference you ſhall finde in the Law of Arbitrements, and the differences of Pleading in ſuch caſe: As alſo that a man may binde himſelfe in an Obligation to ſtand to an award concerning the title of Land (which of it ſelfe is not arbitrable, nor is ſuch Arbitrement any plea in ſuch caſe, in barre of an Action) and that in ſuch caſe the Bond ſhall be forfeited for not performance of the award; as you may ſee in the Law of Arbitrements pag 152 153.

An

*An Arbitrement or award of Lands, by which the party covenanteth to perform it.*

THis Indenture made, &c. between *T. K.* &c. of the one party, and *L. M.* of, &c of the other party witneſſeth; That whereas there hath been, and yet is contention, variance, and Suit betwixt the ſaid parties, not only for and concerning the right, title, and intereſt of, and in a certaine quantity of ground, by eſtimation two Acres or thereabouts, lying in *K.* and adjoyning to the Mill of the ſaid *T. K.* in *K.* aforeſaid, claimed by either of the ſaid parties to be his owne Land and Inheritance; but alſo for and concerning certaine waies to the Mill of the ſaid *T.* through the ground of the ſaid *L.* from all the Townes, Villages Hamlets, and other places in the North ſide of the River of *D.* bordering, lying, and being within the ſpace of ten miles of the ſaid Mill, and all other matters and controverſies betwixt the ſaid parties, for the

friendly ending and appeaſing of which ſaid varıences and controverſies, the ſaid parties have compromitted and ſubmitted, and by theſe preſents doe compromit and ſubmit themſelves, and all matters in varience aforeſaid, to the order, arbitrement, award, doome, and judgement of *F. W.* and *I. W.* Whereupon the ſaid Arbitrators having viewed the ſaid ground in varience, and peruſed divers writings and evidences concerning the ſame, and heard the teſtimony and witneſſe of divers ancient men and neighbours dwelling nigh the ſaid ground, as well touching the occupation and uſage of the ſaid ground by the ſaid *I. R.* and his anceſtors, as alſo the ſaid wayes uſed unto the ſaid Mill by the inhabitants aforeſaid time out of minde; doe make and declare their award, order, doome, and judgement touching the premiſes, and every part of them; and the ſaid *I. R.* and *L. M.* doe covenant ſeverally either of them, to and with the other, for themſelves, their Heires, Executors, and Adminiſtrators

niſtrators in manner and forme following. And firſt, the ſaid Arbitrators doe order, award, and judge, and the ſaid *L. M.* is ſo contented and agreed, and accordingly doth covenant and grant for him and his Heires, to, and with the ſaid *I. R.* his Heires, &c. that he the ſaid *I. R.* ſhall and may from henceforth have, hold occupy, and quietly enjoy to him and his Heires for ever the ſaid parcell or quantity of ground, containing by eſtimation two Acres, lying and being on the North ſide of the River of *D.* directly over againſt the ſaid Mill, and demeane Lands of the ſaid *I. R.* in *K.* aforeſaid, as it is now bounded and meated forth with ſtones by the ſaid Arbitrators: and ſhall alſo have, make, and take to his and their owne proper uſe all the Trees now ſtanding or being, or that hereafrer ſhall grow in and upon the ſaid ground, and all other profits and commodities comming of and upon the ſaid ground (onely the thornes, briers, and herbage excepted and fore-prized) with free liberty,

entry, and passage, for the felling, hewing, leading, carrying away and taking of the same Trees, and all other the said profits and commodities (except before excepted) at all and every time and times hereafter at his and their pleasure. And that the said *T. R.* his Heires and Assignes, and all and every other person and persons, that shall come and bring any Corne to the Mill of the said *T. R.* called *T.* Mill from the said Townes, Villages, Hamblets, or any other place inhabited, shall have free liberties, wayes, and passage for the carrying, fetching, and bringing of their Corne to the said Mill, as well over and through the said parcell of ground set forth and meated as is aforesaid; as also through, and over other the grounds of the said *L. M.* in *K.* aforesaid, in as ample and large manner and forme as the inhabitants of the said Townes, Villages, and Hamblets, or other places have been accustomed and used to doe at any time heretofore, and as 'tis now most commonly used; and shall and may

tye

tye and faſten any of their Horſes, Mares, or other beaſts wherewith they carry any Corne to the ſaid Mill to any Tree growing, or other thing being in and upon the ſaid ground, ſo that the ſtring, cord, or rope exceed not the length of foure whole yards at the moſt; and that the ſaid *I. K.* his Heires, and Aſſignes ſhall, and may lawfully at all and every time and times ſo oft as need ſhall require, amend and repaire all and ſingular the wayes, and every part thereof for the eaſe, ſafeguard, and paſſage of the inhabitants of the ſaid Townes, Villages, Hamblets, and places inhabited, comming and going to and from the ſaid Mill without any let, trouble, vexation, or contradiction of the ſaid *L. M.* his Heires or Aſſignes, or any of them. And that the ſaid *L. M.* his Heires, or Aſſignes ſhall at all times within the ſpace of two yeares next enſuing the date hereof, make knowledge, and ſuffer, or cauſe to be made, knowledged, and ſuffered, all and every act and acts, thing and things, as

as ſhall be reaſonably deviſed, or ad-
viſed by the ſaid *I. K.* his Heires, or
Aſsignes, or his or their learned
Counſell, at the onely proper coſts
and charges in all things of the ſaid
*I. K.* his Heires, or Aſsignes, for
the further aſſurance and better ma-
king as well of the ſaid part, of
quantity of ground containing about
two Acres, as alſo of the ſaid waye
in manner and forme before expreſ-
ſed unto the ſaid *I. K.* his Heires, or
Aſsignes for ever, according to the
true effect, meaning and purport of
theſe preſents; In conſideration
whereof it is further ordained, a-
warded, deemed, and judged by the
ſaid Arbitrators; and the ſaid *I. K.*
doth ſo covenant, &c. that he the
ſaid *L. M.* his Heires, and Aſsignes
ſhall, and may have, take, and enjoy
only the graſſe and herbage, with the
thornes and briers yearely growing
or being in or upon the ſaid parcell
or quantity of ground ſo bounded or
ſet forth as is aforeſaid. And in fur-
ther conſideration of the premiſes
the ſaid *I. K.* hath paid to the ſaid

*L. M.*

*M.* at the inſealing hereof, at the requeſt of the ſaid Arbitrators, the ſumme of twenty pound, &c. in witneſſe whereof not only the ſaid parties to theſe preſent Indentures of award interchangeably have put their Seales, and ſubſcribed their names, but alſo the ſaid Arbitrators to both the partes of theſe Indentures have put their Seales, and ſubſcribed their names, the day and yeare, &c.

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*Another Arbitrement of Debt, where the parties are bound to performe it.*

TO all Chriſtian people, to whom this preſent writing of award indented ſhall come, *G. W. G. N. S. S.* and *I. N.* of, &c. ſend greeting in our Lord God everlaſting. Whereas divers Suits, &c. between *T. W.* and *I. S.* of, &c. for pacifying, ordering, and ending whereof, the ſaid *T. W.* and *I. S.* have bound themſelves either to other in the ſumme of, &c. of lawfull Engliſh money, by their

ſeverall

ſeverall obligations bearing date, &c. with conditions there under written, to ſtand to, &c. *ut ſupra*, of the ſaid *G. I. S.* and *I.* Arbitrators indifferently elected and choſen, as well on the part and behalfe of the ſaid *I. S.* as of the ſaid *I. W.* to award, arbitrate, order, rule, judge, end, and determine all, and all manner of Suits, Debts, Actions, Controverſies, Debates, and Demands whatſoever depending between the ſaid *I. S.* and the ſaid *I. W.* and *W. W.* his Sonne and Heire, ſo that the ſaid award were made and given up in writing under the hands and Seales of all the Arbitrators, at or before the, &c. at, &c. as by the ſaid obligations and conditions amongſt other things doth and may appeare. Know you now, that the ſaid *G. I. S.* and *I.* taking upon them the charge and burthen of the ſaid award, and having deliberately heard the grieſes, allegations, and proofes of both the ſaid parties, doe by theſe preſents arbitrate, award, order, deeme, and judge of and concerning

the

he premiſes in manner and forme
llowing, that is to ſay; Firſt they
e award, order, deeme, and judge
y theſe preſents, that the ſaid *I. S.*
is Executors, or Adminiſtrators, or
me of them, ſhall well and truly
y, or cauſe to be paid unto the ſaid
*W.* or his certaine Attorney, Exe-
tors, or Adminiſtrators, or ſome
them, at or before the, &c. at or
the, &c. two hundred pound of,
c. at or before the, &c. other two
ndred pound of, &c. in full ſatiſ-
ction of foure hundred pound, for
ayment whereof the ſaid *I. S.* ſtood
ound to the ſaid *T. W.* in, and by
oure ſeverall Obligations, whereof
wo are already forfeited, as thereby
ay appeare. Alſo the ſaid Arbitra-
ors doe award, order &c. that the
aid *I. B.* his Executors, and Admi-
ſtrators, or ſome of them at their,
r ſome of their coſts and charges,
hall before the, &c cauſe and pro-
ure, that all Suits, Bills, Plaints,
nd informations heretofore com-
enced againſt the ſaid *T. W.* in any
Court or Courts whatſoever, either

by

by or in the name of the ſaid *I. S.* or by or in the name of *H. S.* his Sonne, or by or in the name of our Soveraigne Lady the Queenes Majeſty that now is, and of every or any of them, or by and in the name of any other perſon or perſons, by their conſents, meanes, and procurement of them, or any of them, ſhall thence forth ſurceaſe, and be no further proceeded in by them, nor any of them or by the meanes, conſent, or procurement of them, or any of them. And before the, &c. be utterly diſcontinued and made voyd.

And the ſaid Arbitrators doe further award, order, deeme, and judge by theſe preſents, that for the ſure payment of the ſaid ſumme of foure hundred pound, the ſaid *I. S.* and *G. S.* within two dayes next after tender or delivery of the one part of this preſent award to the ſaid *I. S.* ſhall well and ſufficiently make, ſeale, and deliver as their Deeds to the ſaid *T. W.* in, &c. one Obligation or writing obligatory ſufficient in the Law, wherein, and whereby the

ſaid

said *I. S.* and *G. S.* shall acknowledge themselves, and either of them to be joyntly and severally bounden to the said *I. W.* in the summe of foure hundred pound of, &c. with condition thereupon in due forme of Law, indorced for the sure payment of the said summe of two hundred pound, parcell of foure hundred pound, at or in the, &c. before, &c. and the other two hundred pound, residue of the said summe of foure hundred pound, at or before the &c. and at &c. Also the said Arbitrators doe further award &c. that the said *I. S.* his Executors, or Administrators, or some of them shall and will before the, &c. at his and their owne proper costs and charges, cause and procure to be cancelled and made voyd one Recognizance of two hundred pound, bearing date the, &c. knowledged and inrolled in the Queenes Majesties high Court of Chancery, wherein and whereby the said *I. W.* standeth bounden to the said *I. S.* in the said summe, with condition thereunto annexed, that if the

the ſaid *T. W.* his Heires, Execu-
tors, and Adminiſtrators, and every
of them ſhould well and truly ob-
ſerve, performe fulfill, and keep all
and every the covenants, grants, arti-
cles and agreements, which on his
and their partes were to be obſerved,
performed, fulfilled and kept con-
tained and ſpecified in one Indenture
bearing date, &c had, and made be-
tween the ſaid *I. W.* on the one par-
ty, and the ſaid *I. S.* on the other
party, concerning the marriage of
*W. W.* Sonne and Heire apparent of
the ſaid *T. W.* and *A. S.* Daughter of
the ſaid *I. S.* according to the true
intent, purport and effect of the ſaid
Indenture; that then the ſaid Recog-
nizance to be voyd and of no effect,
or elſe to ſtand, &c. as by the ſaid
Recognizance more plainly and at
large appeareth. And alſo that the
ſaid I. W. his Executors, or Admini-
ſtrators, or ſome of them ſhall, and
will before the Feaſt of &c deliver,
or cauſe to be delivered unto the
ſaid *I. W.* his Executors, or Admini-
ſtrators, or ſome of them in the ſaid

now

now dwelling house of the said *T. W.* aforesaid, the said Indenture of Covenants concerning the foresaid Marriage, cancelled or to be cancelled. In witnesse whereof the said Arbitrators to both parts of this present award indented, have set their hands and Seales, dated the, &c.

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*An Arbitrement, or award of Debt, made by an Earle upon submission by Bond.*

TO all true Christian people to whom this present writing of award indented shall come; The right Honourable *G.* Earle Marshall of *England*, &c. sendeth greeting &c. Whereas divers Suits, Variances, Controversies, and Debates heretofore have been had, moved, and depending between *I. G.* of *T.* in the County of *A.* Yeoman, on the one party, and *F. M.* of *H.* in the said County Gent. on the other party, for pacifying, ordering, and ending whereof the said *I. G.* and *F. M.* have bound themselves either to other in

the summe of foure hundred pound of, &c by their severall Obligations, bearing date, &c now last past, with condition there under written, to stand to, abide, performe, fulfill, and keepe the award, order, doome, judgement, and determination of the said Earle, indifferently elected, and chosen by the mutuall consent, and at the earnest and humble request, and petition of both the said parties, to arbitrate, award, order, judge, and determine of, for, and concerning all, and all manner of Actions, Suits, quarrels, debts, duties, and demands whatsoever, had, moved, or depending, or which hereafter might be had, moved, or depend between the said parties, by reason of any matter, thing, or things whatsoever accrued, or growne from the beginning of the World, untill the day of the date of the same Obligation: so that the same award were made in writing, indented under the hand and Seale of the said Earle before the nineteenth day of, &c. and the one part of the same writing indented,

dented, delivered, or cauſed to be delivered by the ſaid Earle to the ſaid *I. G.* to his Executors, &c. or any of them, or to their, or any of their uſe, upon, or before the ſaid nineteenth day of, &c. at, or in the now Manſion or Mannour Houſe of the ſaid Earle, called *S.* in, &c. and the other part thereof to the ſaid *F. M.* &c. *Ut ſupra*, as by the ſaid Obligations and Conditions thereof doth, and may more at large appeare Know you now, that the ſaid Earle of his meere good will and favour, which he beareth to both the ſaid parties, and of the great and honourable reſpect which he hath of their future quietneſſe, taking upon him the charge and burden of the ſaid award, and having deliberately at ſundry times at large heard, and conſidered the griefes, allegations, and prooſes of both the ſaid parties, doth by theſe preſents arbitrate, award, order, deeme, and judge of and concerning the premiſſes, in manner and forme following, viz. That the ſaid *F M.* his &c. or

some of them, shall well and truly pay, or cause to be paid unto the said *I. G.* his, &c. or some of them, the summe of one hundred and sixty pound, of, &c. in the, &c. in manner and forme following, viz upon, &c. eighty pound thereof, and upon, &c. other eighty pound thereof residue, and in full payment and satisfaction of the said summe of one hundred and sixty pound, and that in consideration thereof, the said *I. G.* shall permit, and suffer all Suits, quarrels debts, duties, and demands, growne before the date of the said Obligation to cease, and be discontinued, and no further prosecuted by him, or any other by his procurement. And furthermore for as much as the said *F. M.* is charged as is aforesaid, for the payment of the said sum of a hundred & sixty pound, partly by reason of a Judgement heretofore given for the said *I. G.* against one *L. S.* in the Q. Majesties Court, commmonly called, The Kings Bench, in an Action of Debt, in which the said *I. G.* hath recovered

red against the said *L. S.* two hundred eighty five pound, and foure pence, as by the Record thereof, remaining in the said Court appeareth. His honour doth furtner award by theſe preſents, in reliefe and eaſe of the ſaid *F. M.* That if the ſaid *F. M.* his, &c or any of them, doe well and truly pay, or cauſe to be paid the ſaid ſumme of one hundred and ſixty pound according to the true meaning of this preſent award; And if the ſaid *L. S.* his Heirs, &c. or ſome of them, ſhall not well and truly ſatisfie, content, and pay unto the ſaid *T. G.* his, &c. the ſaid ſeverall ſummes above in this award appointed to be paid by the ſaid *F. M.* before the ſeverall dayes herein above mentioned; That then, and at all times after any ſuch default of payment ſo to be made by the ſaid *L. S.* his, &c. the ſaid *T. G.* his, &c. ſhall permit and ſuffer the ſaid *F. M.* his Executors, and Adminiſtrators, and every of them, at the coſts and charges of the ſaid *F. M.* his Executors, and Adminiſtrators, effectually

to proſecute, or cauſe to be proſecuted, all, and every ſuch Execution, and Executions upon the ſaid Judgement ſo had for the ſaid *I. G.* againſt the ſaid *L. S.* as to them, or any of them, or the learned Counſel of them or any of them ſhall ſeem good. And all and every ſum and ſums of mony thereby to be obtained to take, and convert to the onely proper uſe and behalfe of the ſaid *L. S.* his Executors, and Adminiſtrators, without any account, recompence, or payment thereof, or therefore to be yeelded or made to the ſaid *I. G.* his &c. or any of them, any thing in this preſent award conteyned, &c. notwithſtanding. In witneſſe whereof the ſaid Earle to both the parts of this preſent award, hath ſet his hand and Seale, dated the, &c.

Note (Reader) all ſuch Covenants and Conditions as are uſually made for the aſſurance or enjoying of Lands or Tenements, Goods and Chattels may be inſerted into awards, as ſhall ſeeme good unto the Arbitrators and parties.

Of

*Of notice of the Arbitrement.*

AND when the Arbitrators have made their award according to the ſubmiſsion, though they are not bound to give notice, but the parties are to take notice thereof at their owne perill, to ſave the forfeiture of their Bonds (as you ſhall finde the Law to be cleare in the firſt Tract of Arbitrements) yet it ſeemeth convenient and agreeable to equality and a good conſcience that they ſhould not be ſurpriſed, but that the Arbitrators ſhould in due time before that either party be to performe any part thereof, give notice of the ſame unto them, leſt otherwiſe they breake their Bonds and Covenants in that behalfe (if any ſuch be) before they have knowledge of the ſame.

*The finall cauſe and effects of Arbitrements.*

AND thus by that which hath been ſet forth and diſcourſed in this and my former Treatiſe of Arbitrements, it doth evidently appeare, that the ſcope and end of Arbitrements and other Judgements is all one; and chiefly, the finall determination of Striſes, Suits, and Controverſies, and ſo conſequently their effects not much different. But the Law ſeemes more favourable to Arbitrements then other Judgements, inſomuch as by Arbitrators the ſtrict courſe and tedious ceremonies of Law Suits (which are wont moſt commonly to weary Suiters, and to dive ſomewhat too deepe in o their Purſes) are cut off, and ſhorter deciſions by them made, with little or no coſt at all. But to make this good, this caveat (Reader) muſt be obſerved, leſt this courſe prove as bad, if not worſe then a Law Suit; that there be honeſt, indifferent, and judicious

dicious Arbitrators choſen, not only ſuch as are juſt men, but ſuch as are skilfull and knowing in the matters in controverſie, that their ignorance may not make them erre, and the parties ſuffer as much by their folly, as others no doubt have done by their Arbitrators injuſtice and knavery; for unequall and inſufficient Arbitrements doe often cauſe tedious Suits, and thoſe no ſmall expence, ſo that this courſe which the people make choiſe of for their cure, proves often worſe then the diſeaſe; but I have touched upon this before, and therefore this here ſhall ſuffice.

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*An Award made by an Arbitrator touching Copy-hold Land, between an Alderman of London and another.*

TO all Chriſtian people, to whom this preſent writing of award indented ſhall come, *H. T.* of *Lincolnes Inne*, in the County of *Middleſex* Eſquire, ſendeth greeting in our Lord God

God everlaſting; Whereas Suit, Variance, and Debate heretofore hath been, and yet is had, moved, and depending, as well in the Queenes Majeſties Court of Requeſts, as in divers other Courts, between *K. H.* Citizen and Alderman of *London* of the one party, and *R. E.* of *K.* in the County of *M.* Yeoman of the other party, of, for, and concerning the right, title, uſe intereſt, and poſſeſſion of divers Lands, Tenements, and Hereditaments, with the Appurtenances, lying and being in *K.* within the Mannour or Lordſhip of *T.* within the ſaid County of *M.* and conteyning by eſtimation about two hundred Acres of Land, Meadow, Paſture and Wood, commonly called or knowne by the name of *Hebines* Land; for the appeaſing, finall end and determination of all which ſaid Suits, Variances, and Debates, the parties aforeſaid have ſubmitted and compromitted themſelves to ſtand to, obey, and performe the Arbitrement, Ordinance, Doome, and Judgement of the ſaid *H. T.* Arbi-

rator, indifferently elected, named, and choſen by both the ſaid parties, indifferently to Arbitrate, Order, Deeme, Award, and Judge, as well of, for, and concerning the eſtate, right, title, intereſt, uſe, and poſſeſſion of all and ſingular the ſaid Premiſes, and every part and parcell thereof; as alſo of, for, and upon all manner of Actions, Suits, quarrels, Debts, Debates, Treſpaſſes, and demands whatſoever heretofore had, moved, ſtirred or depending between the ſaid parties from the beginning of the World untill the twentieth day of *November* laſt paſt, as by their ſeverall writings Obligatory, wherein either of the ſaid parties ſtand bounden to the other of the ſame parties in the ſumme of two hundred pound, bearing date the ſaid twentieth day of *November*, and made for the true performance of the ſaid Award, more at large it doth and may appeare. Whereupon the ſaid *I. H.* having taken upon him the charge and burden of the ſaid Arbitrement, and having preſent before him

him both the ſaid parties, and hav-
ving alſo very adviſedly weighed and
conſidered the ti les, claimes, alle-
gations, and proofes of either of the
ſaid parties to the ſaid Premiſes
And upon ſight and due conſideratio-
on of all the Evidences, Writings and
proofes ſhewed and made before me
the ſaid *H. I.* by both the ſaid par-
ties doe Award, Arbitrate, Order
Deeme, and Judge of the Premiſes
in manner and forme following
that is to ſay: Firſt, I the ſaid Arbi-
trator doe Award, Deeme, Order
and Judge, that the ſaid *R. E.* or his
Heires, at all times within three
yeares next enſuing the date of theſe
preſents, upon lawfull and reaſona-
ble warning by the Steward, Bay-
liffe or Reeve of the ſaid Mannour of
*T.* for the time being, ſhall at the
next Court ſo to be holden, the
next after ſuch warning had, ſur-
render and give up into the hands
of the ſaid *R. H* his Heires or Aſ-
ſignes in open Court, according to
the Cuſtome of the ſaid Mannour
to the uſe of the ſaid *R. H.* and his
Heires

Heires for ever, all and ſingular the aforeſaid Lands, Tenements, and Hereditaments hereafter in theſe preſents mentioned, expreſſed, and declared, that is to wit; one Manſion or dwelling Houſe, wherein the ſaid *R. E.* now dwelleth, with all Edifices and Buildings, &c. And furthermore, I the ſaid *H. T.* doe award, ordaine, deeme, and judge by theſe preſents, that the ſaid *R. H.* his Heires or Aſſignes at the ſaid Court, there and when the ſaid Surrender ſhall be ſo made, ſhall aſſure and convey unto the ſaid *R. E.* or to his Heires, that ſhall ſo ſurrender the premiſes as aforeſaid by Copy of Court Roll, according to the cuſtome of the ſaid Mannour, or otherwiſe as by the ſaid *R. E.* his Heires and Aſſignes, or any of them, or by his or their learned Counſell, ſhall be reſonably deviſed or adviſed, and at the proper coſts and charges of the ſaid *R. E.* his Heires and Aſſignes, not altering by the ſaid aſſurance or aſſurances ſo to be devi-ſed or adviſed as is aforeſaid, any

Cuſtome,

Custome, Liberty, or Jurisdiction of the said Lordship, Mannour, other the Premises, with all and singular the said Lands, Tenements, and Hereditaments, and all other the Premises, with their appurtenances whatsoever, before by these presents ordered, and judged to be surrendered as is aforesaid (foure Acres of Land now in the occupation of, &c. parcell of the Premises to be chosen by the said *R. H* &c. onely excepted and fore-prized) to have and to hold the same Lands, Tenements and all other the Premises with the appurtenances (except before excepted) unto the said *R. E.* and his Heires Males, incorrupt within the fourth degree of Consanguinity, according to the ancient Custome of the said Mannour. And if it happen that the said *R. E.* do decease before the said Surrender made as is aforesaid, Then to have and to hold the said Premises with the appurtenances, to the Heires of the said *R. E.* which shall surrender the same, and to

his

Heires males incorrupt within the fourth degree of Consanguinity, &c.

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*An Award, reciting that either of the Parties stand bound to other to performe the Award, and that the Award is made before the prefixed time in the Obligation, and with the full consent of both the parties.*

TO all Christian People, to whom this present writing indented of award shall come, *K. W.* and *R. C.* send greeting in our Lord God everlasting. Know yee, that whereas Varience, Strife, Debate, and Controversie hath heretofore been had, moved, and stirred between *A. B.* of *C.* and *D. E.* of *F.* for, and concerning the right, title, interest, use, possession, and occupation of &c. for the appeasing and ending whereof, either of the said parties by their mutuall assents, consents, and agreements, have submitted, compromitted, and bound them-

themselves either to other by their
severall writings Obligatory, bea-
ring date, &c. in the summe of, &c.
to stand to, abide, obey, observe,
performe, fulfill, and keepe the A-
ward, Arbitrement, Ordinance,
Doome, and Judgement of us, &c.
Arbitrators indifferently elected
and chosen between the said parties
to arbitrate, order, &c. of, and for
the Premises, as by the said severall
Obligations, with conditions for
the performance thereof more at
large appeareth. Whereupon we the
said Arbitrators taking upon us the
labour, businesse, and charge of the
same award, and willing to set the
said parties at a finall peace, unity
and concord, for, and concerning
the Premises, have by good advice
and deliberation seen, heard, and
throughly examined both their ti-
tles, allegations, evidences, and
proofes, in, and to the said Premi-
ses; and thereupon before the day
and time appointed unto us by the
said Obligations, for the making,
giving up, and finishing of the said

award,

Award; we the ſaid Arbitrators by and with the full Aſſent, Conſent, and Agreement of both the ſaid parties, do make, publiſh, declare, and give up this our preſent Award betweene the ſaid parties of, for, and concerning the premiſſes, in manner and form following: Firſt, we award, ordaine, deeme, and judge, That &c. Alſo we award &c. And finally, we award, ordaine, deeme, and judge, &c. In witneſſe whereof we the ſaid Arbitrators, and alſo both the ſaid parties to the Award, have interchangeably put our Hands and Seales, the tenth day of &c. in the twentieth yeare of the Reigne of &c. by the grace of God of *England* &c. King, Defendor of the Faith, &c.

## Queries.

*Certaine Queries or doubtfull Cases collected by the same Author out of our old and new Bookes, and put under their proper Heads or Titles; together with the Books cited pro and contra, very useful and necessary for all Students in the Law.*

### Acceptance.

A Man makes a Feoffement upon condition of reinfeoffement, whether acceptance of another estate than is contained in the Condition, shall be a Dispensation of the Condition, or not? *Quere.* And see *Title Conditions. 9.*

A Bishop makes a Lease for yeares rendring Rent, after makes a new Lease,

Leaſe, with confirmation of the Deane and Chapter, and dies, if by his death the firſt Leaſe be void, ſo that the Succeſſor cannot make it good by acceptance of the Rent, or not. *Quere.* 32 *H.* 8. *Dyer. fo.* 46. *pl.* 9.

Tenant in taile makes a Leaſe for yeares to commence after his death, rendring rent, and dies, the iſſue Accepts the Rent. Whether this ſhall barre his entry or not? *Quere. Dyer. fo.* 279. *a. pl.* 7. *fo.* 69. *pl.* 30. *fo.* 246. *a. pl.* 69. *Cooke* upon *Littleton*, *fo.* 44. *a. Pl. Com. fo.* 430. *&* 437. *a.*

Tenant in taile makes a Leaſe for yeares rendring 20 *s.* Rent, and after releaſes 19 *s.* and dies, and the iſſue accepts the 12 *d.* whether he may diſtraine for the 19 *s.* more or not? *Quere* 13 & 14. of the Queene *Dyer. fo.* 304. *pl.* 53.

*Accord.*

WHether an Accord with satisfaction be a good Plea in an Attaint, or not, *Quære* 13. E. 4. 1. *Br. Attaint.* 91. 13. E. 4. 5. *Br. Attaint.* 118. 35. H. 6. 30. *Br. Attaint.* 12. 6. E. 6. *Dyer. fo.* 75. *pl.* 27. 6. *Rep. fo.* 44 *a.*

*Acquittance.*

A Man bargaines and sels a Manour for 20 *l. solvend.* at such a Feast; and in the Indenture there are divers Covenants; for observance of all which Covenants and Payments, he bindes himselfe in 40 *l.* whether in debt for this, the Defendant may plead payment without an Acquittance, or not? *Quære* 26. H. 8. *Dyer. fo.* 6. *pl.* 3. 28. H. 8. *Dyer. fo.* 25. *pl.* 160.

*Admini-*

*Administrator and Administration.*

AN Executor payes 20 *s.* for the Teſtator, and retaines a horſe of the Teſtators of the ſame value; whether this be an Adminiſtration or not? *Quere* 21. *E.* 4. 21. *Br. Title Adminiſtration* 37.

Whether Probate of a Will, or taking Letters of Adminiſtration without doing of any more, ſhall be ſaid an Adminiſtration or not? *Quere* 26. *H.* 8. 7. *Br. Adminiſtration* 2. 20. *H.* 6. 1. *Br. Adminiſtration* 5. 34. *H.* 6. 14. *Br. Adminiſtration* 7. 37. *H.* 6. 27. *Br. Adminiſtration* 31.

*Annuity.*

WHether an Annuity may be granted over, or not? *Quære* 41. *E.* 3. 27. *Br. Annuity* 8. 19. *H.* 6. 42. *Br. Annuity* 19 21. *E.* 4. 20 *Br. Annuity* 37. 14. *H.* 4. 5. *Br. Deputy, &c.* 4.

Whether a releaſe of Actions reals, be a barre in an Annuity or not? *Quere* 2. *H.* 4. 13. *Br. Annuity* 43. 11. *H.* 4. 85. *Br. Debt.* 66. See *Dyer. fo.* 24. *pl*, 149. an inheritance in a *nomine pœna*. See *Davis Reports, fo.* 6. *a. and Title Releaſes* 2.

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*Appeale.*

A Man for Felony adjudged to death, and pardoned, is after put to anſwer to an Appeale of Felony, for a Felony done before, and whether he may or no? *Quære:* For the Appeale was once determined, *Br. Appeale* 10. 6. *H.* 4. 6. *Br. Corone* 11. & 147. *Br. Charter of pardon.* 44.

Whether a Releaſe of all Actions Reall and Perſonall, be a Barre in an Appeale of death, or not? *Quære. Littleton, Sect,* 502. 9. *H.* 4. 2. *Br. Tit. Appeale* 29.

An Appellor dies within the yeare, whether the Appeale ſhall deſcend to other;

others or not? *Quære.* 11. *H.* 4. 11: *Br. Appeale* 30. 9. *H.* 7. 5. *Br. Appeale* 88. 17. *E.* 4. 1. *Br. Appeale* 104. 38 *H.* 6. 12. *Br. Appeale* 141. 9 *H.* 7. 5. *Br. Appeale* 144. 16. *H.* 7. 15. *Br. Appeale* 156. *Dyer. fo.* 69 *pl.* 31.

A woman who hath Title of an Appeale, *De morte viri*, takes husband, she loses her Appeale; but if the woman convicts the Defendant, and then takes husband, whether in such case she may demand execution or not? *Quære.* 1. *M.* 1. *Br. Appeale* 10. 21. *E.* 4. 72. 73. *Br. Appeale* 112. 13. *H.* 4. 8. *Br. Appeale* 148.

## *Apportionment.*

A Man makes a Lease for yeares of Land, and of a stock of Sheepe, rendring certaine Rent, all the Sheep die, whether the Rent shall be apportioned or not? *Quære.* 35. *H.* 8. *Dyer. fo.* 56 *pl.* 15 12. *H.* 8. *fo.* 11. *pl.* 5. *Rep. fo.* 17. *a. Spencers Case.* 7. *H.* 7. 4. & 5. *Br. Appertionment.* 24. 4. of the Queene *Dyer. fo.* 212. *pl.* 37, 38.

*Arbitrement.*

WHether Arbitrators may arbitrate Free-hold or not? *Quære*, 14. *H.* 4. 18. & 19. *Br. Arbitrement.* 15. 12. *Ass. pl.* 25. *Br. Arbitrement* 30. 21. *E.* 3. 26. *Br. Arbitrement* 53. See my first Treatise of Arbitrements, in the beginning thereof.

A man is bound to stand to the Arbitrement of *I. N.* who arbitrates that he shall pay 10 *l.* whether the obligee may have debt upon the Obligation, and upon the Arbitrement also, or not? *Quære.* 33. *H.* 62. *Br. Der* 23. See my Treatise of Arbitrements abovementioned.

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*Arrearages.*

A Man recovers a Mannour in a *Precipe quod reddat*, and doth not sue execution in a yeare or two, and after sues execution, whether he shall have

have the Arrerages and Services due after the Judgement or not? *Quære*, 48. E. 3. 16. *Br. Arrearages* 5. See the like Case immediately following.

Grantee of a Rent Charge in Fee distraines for Arrerages, and then grants it over, whether the Arrerages be loſt or not by the Aſsignement. *Quere.* See my *Rep. pa.* 103. *pl.* 178.

A man who hath Title of Entry for non-payment of Rent upon a Leaſe doth not enter by the ſpace of 1 yeare or two after the forfeiture, what remedy for the Rent incurred after the Title of entry. *Quære.* 6. *H.* 7. 3. *Br. Arrearages* 11.

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*Aſſets by diſcent, and Inter-maines.*

IF And deſcends to an Heire, and he aliens it and after re-purchaſes it, whether it ſhall be Aſſets or not? *Quare.* 26. *H.* 8. 1. *Br. Aſſets, &c.* 1. & 27.

Land

Land of 40 *s.* a yeare discends charged with the Rent of 26 *s.* by a yeare, this is not Assets of 40 *s. tamen hoc videtur*, where the charge is of an estate of Freehold, but here the Charge is but a Chattell, and the Freehold not charged. *Ideo Quære.* 43. *E.* 3. 9. *Br. Assets.* 9.

Whether a Reversion shall be Assets in Debt, or a *Formedon*; or a rent upon a Lease for life, shall be Assets in a *Formedon* or not? *Quære* 40. *E.* 3. 38. *Br. Assets* 12. 7. *H.* 6 3. *&* 4. *Br. Assets*, 17. 16. *E.* 3. *Br. Assets.* 23. 38. *E.* 3. 32. *Br. Assets* 30. *Cooke* upon *Littleton*, *fo.* 374. *b.*

An Executor payes a Debt of his proper goods, and retains goods of the Testators to the value, whether these shall be Assets or not? *Quære.* 21. *E.* 4. 21. 22. *Br. Assets.* 6. 20. *H.* 7. 4. *&* 5. *Br. Assets inter mzines.* 12. See *Cooke* upon *Littleton*, *fo.* 283. *a.*

Whether a Tenancy escheated after the death of the Ancestor, shall be

be Assets to the Heire, for to barre him by a Warranty or not? *Quere. Keilway.* 104. *pl.* 14. See *Perkins, fo.* 20. *b. Cooke* upon *Littleton, fo.* 117. *a.* and 30. *H.* 8. *Dyer. pl.* 15.

If an Executor release a Debt or discharge one in Execution, whether this shall amount to as much as Assets received or not? *Quare. Hobarts Rep.* pa. 81.

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*Attachment of Goods.*

WHether an Attachment in Court Baron be forfeited by the non-appearance of the party or not? *Quere* 28. *H.* 6. 9. *Br. Attachment* 2. 34. *H.* 6. 49. *Br. Attachment* 19.

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*Attaint.*

WHether an Attaint lyes in a Writ of Redisseisin. or not? and whether the Redisseisin be more than an Inquest of Office? *Quere.* 18. *H.* 8.

H. 8. 1. Br. Attaint. 1. 2. H. 4. 2. Br. Attaint. 22. 40. Ass. pl. 23. Br. Attaint. 79 11. Rep. Sir Ja. Heydons Case.

Whether an Attaint lyes in a Writ of inquiry of waste or not? Quere. 48. E. 3. 19. Br. Attaint. 21. 2. H. 4. 2. Br. Attaint. 22. 11. Rep. Sir John Heydons Case.

In an Attaint one of the Petty Jury pleades an Accord, with satisfaction made betwixt the Plaintiffe and the Defendant, whether an Accord with satisfaction be a good Plea in an Attaint, and whether the petty Jury may plead that which is betwixt the Plaintiffe and Defendant or not? Quere. 13. E. 4. 1. Br. Attaint. 91. 13. E. 4. 5. Br. Attaint. 118.

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*Attornement.*

LEssee for life is disseised by the Grantee of the reversion, and after recovers in an Assize; whether this be an Attornement or not, Quere 2.

re 2. *Rep, Tookers Case* the latter end: Coke upon *Littleton fo.* 319. *a.* 18. *E.* 3. 48. *b.* 6. *Rep.* 69. *b. Sir Moyle Finches Case.*

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*Bayle and Mainprize.*

WHether the Bayle may render the body of the Defendant in the Common Bench after a Writ of Error brought by him? or Whether the Bayle be in this case forfeited or not? *Quære. Hobarts Rep. pa.* 157. *pl.* 142.

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*Baylie.*

A Man distraines as Baylie, and is not Baylie, and after the Lord agrees to it, whether it be good or no? *Quære.* 26. *H.* 8. 8. *Br. Baylie, &c.* 1. 7. *H.* 4. 30. *Br. Baylie, &c.* 4.

*Baron*

*Baron and Feme.*

BAron and Feme obligees, the Baron onely brings Debt, whether it will lye or not? *Quære.* 3. *H.* 6. 36. *Br. Baron and Feme*, 2. 43. *E.* 3. 10. *Br. Baron and Feme*, 14. 39. *E.* 3 5. *Br. Baron and Feme* 55. 43. *E.* 3. 8. *and* 16. *Br. Baron and Feme* 64.

Baron and Feme bound in an Obligation of an 100 *l.* for a Releafe made to them of Land *de jure uxoris*, the Baron dies, whether this Obligation ſhall binde the Feme or no? *Quære.* 44. *E.* 3. 33. *Br. Baron and Feme*, 77.

Whether a man may be bound to pay money to his wife or not? *Quære*, for I doubt of it. 27. *H.* 8. 27. *Br. Conditions* 8. *Cooke* upon *Littleton*, *fo.* 206. *b.*

Whether Baron and Feme may be Conſpirators or not, *Quære.* 38. *E.* 3. 3. *Br. Conſpiracy* 14.

In

In an Avowry against a Baron and Feme, whether the Baron by himself, or whether the Baron and Feme together may disclaime or not, *Quære.* See *Title Disclaimer.* 1.

*Barre.*

IN an Annuity the Defendant said that a Tenth was granted to the King by the Clergy, and these Arrerages were leavied by the Collector, as the portion of the Plaintiffe due to the King, Judgement, &c. whether this shall barre the Plaintiffe or not. *Quære.* 21. *H.* 7. 12. and 16. *Barre.* 49. & 50.

Whether he which is barred in Debt against an Executor, upon a fully administred found against him, shall have a new Writ of Debt upon Assets come after or not *Quære.* 4 *H.* 4. *Br. Debt* 106. and Executors 85. 9. *H.* 6. 36, 37. *Br. Executors* 70. See the 8. *Rep. fo.* 134. *a. b.*

Tenant

Tenant for life the Reversion to an Ideot, an Uncle Heire apparent to the Ideot leavies a Fine, and dies, Tenant for life dies, the Ideot dies whether the issue of the Uncle who leavied the Fine shall be barred by it or not. *Quære.* See my *Rep. pa.* 94. *pl.* 164. *& pa.* 146. *pl.* 216.

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*Cessavit.*

Lord Mesne and Tenant, the Mesne cesses in payment of Service by two yeares, and after purchases the Tenancy; whether a *Cessavit* lies against him or not. *Quære. Keilway Casus incerti temporis, fo.* 104. *pl.* 15. See 27. *H.* 8. 28. Br. *Cessavit.* 1.

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*Champerty.*

Councell agrees with his Clyent before Action brought, that he shall have part for his wages, whether this be *Champerty* or not. *Quære.* 12. *H.* 4. 26. 13. *H.* 4. 16. *&* 17. Br. *Champerty* 3.

The

The Statute ſpeakes onely of Plea, and therefore whether *Champerty* lyes upon a Suit in a *Subpœne* or not. *Quære.* 15. *H.* 7. 2. Br. *Champerty* 6.

## *Charge.*

A Man makes a Leaſe for life, and charges the reverſion which after comes to the Tenant for life by diſcent, whether he ſhall hold it charged or not. *Quære.* 9. E. 4. 18. Br. *Charge.* 16. & 29. & Br. *Eſtates.* 25. See *Dyer. fo.* 141. *pl.* 44.

A Diſſeiſor grants a Rent Charge, the Diſſeiſee confirmes the Grant, and after enters upon the Diſſeiſor, whether the Charge be avoided or not. *Quære.* See *Title Confirmation* 2.

*Charter of Pardon.*

WHether a Pardon of the King of Felony, Homicide, &c. doth pardon Murder or not. *Quære*, See my *Rep. pa.* 213. *pl.* 250.

*Clergie.*

WHether a Baſtard may have his Clergie or not. *Quære.* 11. *H.* 4. 8 Br. *Baſtardy*, 46. & Br. *Clergie* 22.

Whether a man *captus acutis*, ſhall have his Clergie or not. *Quære.* Br. *Clergie* 21.

*Commoner and Common.*

WHether a man may borrow anothers Beaſts, to take Seiſin of Common, ſo that he chaſe them out preſently, or not. *Quære.* 45. *E.* 3. 25. Br. *Commoner, &c.* 5. 22. *Aſſ.*

Ass. pl. 84. Br. Commoner, &c. 40. & Br. Title seisin, 5. & 36.

## Conditions.

A Man Covenants that his eldest Sonne shall marry the Daughter of another by such a day, and he dies before the day, whether the second Sonne that now is may perform the condition or not. *Quære.* 27. H. 8. 14. 15. Br. *Conditions* 7.

Whether a release of a right, &c. upon a condition subsequent, be good or not. *Quære.* 21. H. 7. 24. Br. *Cond.* 84. 17. *Ass. pl.* 2. Br. *Cond.* 103. 31. *Ass. pl.* 32. Br. *Cond.* 115. *Cooke* upon *Littleton, fo.* 274. *b.* 43. *Ass. pl.* 12. Br. *Releases* 39.

A man is bound to infeoffe a woman by a day, and before the day he himselfe marries the woman, he may make a Lease for a moneth to a stranger, the remainder to his wife, and this is a good performance of the condition,

dition, by Fisher tamen Quere. 24. H. 7. 4. Br. Feoffements of Lands 38.

A man makes B. & C. his Executors, proviso that B. shall not administer, whether this proviso be good or not Quere. See Title Executors 4.

A man makes a gift in taile upon condition that the Donee shall not make a Lease for three lives, or twenty one yeares, according to the Statute of 32. H. 8. whether this be a good condition or not. Quare. 10. Rep. Cooke upon Littleton. fo. 223. fo. 37. a, 33. H. 8. Dyer. fo. 48. 49.

Lessee for yeares Covenants and grants to the Lessor, that if he, his Executors or Assignes, alien the terme, that it should be lawfull to the Lessor and his Heires to enter the Lessee maker his wife Executrix and dies, who takes husband, and the husband aliens, whether the Grant and Covenant made of the part of the Lessee her a Condition or not. Quere, and whether the Condition be

broken

broken by the alienation of the second husband or no? *Quære* 28. H. 8. *Dyer. fo.* 6. *pl.* 1. See *Dyer fo.* 45. *pl.* 11. and 38.

A man makes a Leafe for yeares, upon condition that if the Leffee during his life, aſsignes his eſtate, that it ſhould be lawfull to the Leſſor to reenter, the Leſſee deviſes it by his Teſtament, whether this be a breach of the Condition or not, *Quære* 31. H. 8 *Dyer. fo.* 45. *pl.* 3.

A man in Taile makes a Feoffement upon condition to make back an Eſtate to him and his wife in taile, the remainder to *T. M. Filiæ meæ*, &c. the remainder *Sibill. filiæ meæ*, the Feoffees make a Feoffement to the firſt Feoffor and his wife in taile, the remainder to *T. M. Filiæ meæ*, the remainder *Sibill. filiæ meæ*, the Feoffor dies, and *T. M.* enters for Condition broken, it is holden that the Condition was broken, becauſe that *Sibill. Filiæ meæ* cannot be intended the Daughter of the firſt Feoffor, but whether the Condition be extinguiſhed, or onely

suspended by the acceptance of the Feoffor, this is the question, and of this *Quere*. 31. *H.* 8. *Dyer. fo.* 45. *pl.* 4. 5. *E.* 6. *Dyer. fo.* 69. *pl.* 36. See 8. *H.* 7. 7. *Br. Conditions* 134. 22. *E.* 4. 17. *Br. Conditions* 167.

Lessee upon condition that he shall not do waste, he suffers waste, whether this be a breach of the Condition or not. *Quere*. 10. and 11. of the Queen, *Dyer, fo.* 281. *pl.* 21.

Gavelkinde Land is devised to the eldest Sonne, upon condition that he shall pay 100 *l.* to the wife of the Devisor, he failes of payment, whether the youngest Sonne may enter in the moity as by an implied limitation or not. *Quere*. 14. & 15. of the Queene *Dyer. fo.* 316. *pl.* 5. See the 3. *Rep. fol.* 21. *a. Bordstons Case.*

A man grants a Rent *de novo* in Fee, upon condition that the Grantee shall not alien, whether this be a good condition or not *Quere. Coke* upon *Littleton, fo.* 223. *a.* See 2. *Rep. fo.* 70. 76. & 78.

*Confir-*

*Confirmation.*

BAron and Feme Donees in speciall Taile, the Baron leavies a Fine, and dies, he in reversion confirmes to the wife her Estate, to have to her and to her Heires of her body by the husband ingendred, what is wrought by this Confirmation. *Quere.* 9 *Rep. Beaumonts Case.* See my *Rep. pa.* 146. *pl.* 216.

*Copy hold.*

THe King grants a Copy-hold for life Generally, whether this destroyes the Copy-hold or not. *Quere.* my *Rep. pa.* 206. *pl.* 246.

*Coron, &c.*

A Man bailes goods to another to keepe, and after the owner that bailed them, takes them againe felo-

niously, whether this be Felony or not. *Quære.* 7. *H.* 6. 42. Br. *Crrone* 45. 5. *H.* 7. 18. Br. *Corone* 142. 29. *H.* 6. Br. *Corone*, 216. 13. *E.* 4. 9. Br. *Corone* 160.

Whether a man may feloniously steale goods in his owne custody or not. *Quære.* 21. *H.* 7. 14. Br. *Crrone* 58. 12. *Ass. pl.* 32. Br. *Corone* 76. 3. *H.* 7. 12. Br. *Corone* 137. 13. *E.* 4. 9. Br. *Corone* 160. See *Dyer fo.* 5. *pl.* 2. and See now the Statutes of 21. *H.* 8. *cap.* 7. and 5. of the Queene, *cap.* 10. by which 'tis made Felony for a Servant to steale goods in his custody to the value of 40 *s.* &c.

A man delivers an Obligation to his Servant to receive a debt of the Obligor; and the Servant receives it, and after runs away, &c. whether this shall be Felony within the Statutes of 21. *H.* 8. and 5. of the Queene before cited or not. *Quære.* Because that the money was not delivered to him by his Master, as the Statutes speake. 25. *H.* 8. *Dyer fo.* 45. *pl.* 2.

Three

Three men are appealed in Felony, two as principals, and the third as accessary, one of the principals is attainted, and the other not. whether the accessary may be arraigned before the Attainder of the other or not. *Quære. Keilway Casus incerti temporis. fo.* 107. *pl.* 23.

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*Corporations.*

WHether a Corporation may retaine a Servant without Deed or not? and what Acts they may do without Deed, what not? *Quære.* 14. *H.* 8. 2. 29. *Br. Corporations* 34. 4. *H.* 7. 17. *Br. Corpor.* 49. 4. *H.* 7. 6. *Br. Corpor.* 47. 7. *H.* 7. 9. *Br. Corpor.* 50. 14. *H.* 7. 25. 26. *Br. Corpor.* 51. 10. *E.* 4. 6. 10. *Br. Corpor.* 56. 18. *E.* 4. 8. *Br. Corpor.* 59. 21. *E.* 4. 76. *Br. Corpor.* 66. 18. *E.* 4. 8. *Br. Corpor.* 73. 13. *H.* 8. 12. *Br. Corpor.* 83. *Pl. Com.* 91. 92. 4. *Rep.* 119. 6. *Rep.* 38. 10. *Rep.* 67. 11. *Rep.* 79. *Dyer. fo.* 102. *pl.* 83.

The King grants a Manour *hominibus de I. hæredibus & successoribus suis* rendring Rent, whether this doth make them a Corporation or not. *Quære.* And *quære* if it had been without rendring any rent: See *Tit. Grant of the King* 1.

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*Covenant.*

A Man Covenants for himselfe, not naming his Executors, whether this shall binde his Executors or not. *Quære.* See *Title Executors* 2.

*A.* Covenants with *B.* to infeoffe him of the Mannour of *D.* before Easter, discharged of all former incumbrances, but Leases of which the antient Rent is reserved, after, and before the Feoffement, he makes new Leases rendring the antient Rent, whether this be a breach of the Covenant or not. *Quære* 3. & 4. *P. & M. Dyer. fo.* 139. *pl.* 34.

A

A man upon Covenants of Marri-
covenanteth that immediatly
his decease, the Land shall inure
remaine to his Sonne, and what
this Covenant doth raise a use
the Sonne or not. *Quære.* See *Title*
*Vse* 1.

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*Countermand.*

A Feme sole commands *I.* to make
an Obligation in her name, and
deliver it as her Deed, and before
execution of it she takes husband,
after 'tis executed, by some this
binder her, because she had po-
*tempore mandati. Quære.* whether it
not countermanded by the inter-
marriage. 14. *h.* 4. 2. *Br. Countermand &c.*
17. *H.* 6. 7. *Br. Relation* 1. 3. *Rep. fo.*
4. *Rep. fo.* 60. & 61. *Perkins* 140.

Whether a Disseisin shall counter-
mand a devise or not. *Quære.* 39. *H.* 6.
*Br. Devise* 25.

A Feme sole Licenses a man to hunt in her Warren, and after takes husband, whether by the inter-marriage the License be countermanded or not. *Quære* 22. *H.* 6. *fo.* 52. *Br. License, &c.* 6. 3. *H.* 8. *Keilway, fo.* 163. *a.* 4. *Rep. fo.* 60. *&* 61.

A Lease at will is made to a Feme sole who takes husband, whether by this the Lease be determined or not. *Quære.* 3. *H.* 8. *Keilway fo.* 161. *pl.* 4.

*Court Baron, County Court, and Hundred.*

A Man brings debt upon a Recovery in Court Baron, whether the Defendant may plead *nul tiel Record*, or not, or whether he ought to say, *nul tiel Recovery. Quære. Br. Court Baron, &c.* 1. 34. *H.* 6. 42. *Br. Court Baron* 14. 9. *E.* 4. 14. *Br. Court Baron* 16. See my *Reports, pa.* 15. *pl.* 35.

Upon a Recovery in debt in a Court Baron, the Baily cannot sell the Goods of the Defendant taken in execution,

tion, except by cuſtome, and whether he ought to keepe them as a diſſe till the plaintiffe be ſatisfied of Debt, or whether he may deliver them to the Plaintiffe in execution or not. *Quære.* 22. *Aſſ. pl.* 27. *Br. Court Baron, &c.* 27. 38. *E.* 3. 3. *Br. Court Baron* 4. *H.* 6. 17. *Br. Court Baron* 6. 1. *E.* 4. *Br. Court Baron* 10.

A man brought Debt upon a Recovery in antient Demeaſne, which in a Court Baron, whether the Defendant might wage his Law or not. *Quære.* See *Br. Title wager of Law* 10.

Whether a Hundred may be parcell of a Mannour or not. *Quære.* 27. *H.* 6. 2. *Br. Parcell &c.* 2. *& Br. ſcire facias* 7. See *Keilway, fo.* 151. *pl.* 51.

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*Cuſtomes.*

BY the Cuſtome of *London* a man cannot wage his Law for bounding, but notwithſtanding in Debt brought at *Weſtminſter*, the better opi-

gieu seems to be, that there he shall have his Law, because that such customes are allowable onely in the places where they do arise. *Lamen Quare* 1. E. 4. 5. *Br. Customes* 43.

The Inhabitants of a Parish have a Chappell of Ease, and a Custome that those within such a Precinct ought to finde a Rope for the third Bell, and to repaire part of the Mother Church, in consideration of which they have been freed from payment of any Tithes to the Mother Church, whether this be a good Custome or not. *Quære.* See my *Reports*, *pa.* 91. *pl.* 151.

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## *Damages.*

WHether in Detinue for divers severall things, the Jury may give Damages in grosse, or whether they ought to give them severall or not. *Quære.* 1. E. 5. 5. *Br. Dam.* 141. 1. R. 3. *fo.* 1. 3. H. 6. 43. *Br. Detinue of Goods* 4. & 48.

A

A man distrains for a penalty assessed by Custome, and distrainable by Custome, and upon a Replevin brought, Judgement was given for the Avowant, and Damages assessed, and whether Damages ought to have been given or not. *Quære.* See my Reports, *pa.* 38. *pl.* 64.

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*Darreine Presentment.*

A Man seized of a Manour with an Advowson appendant in right of his wife, presents, and after hath issue, and the wife dies, the Church becomes void, and he presents and is disturbed, whether he shall have an Assize of Darreine Presentment or not. *Quære. Keilway Casus incerti temporis, fo.* 118. *b. pl.* 61.

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*Debt.*

WHether the Heire of the Heire, or the Executors of the Heire shall be charged in debt upon an Obligation

ligation made by the Ancestor or not. *Quære. 11. Com. fo. 441. a.*

A man is bound to stand to the Arbitrement of *I. N.* who arbitrates that he shal pay 10*l.* whether the Obligee shall have Debt upon the Obligation, and upon the Arbitrement also. *Quære. 33. H. 6. 2. Br. Debt 23.*

In Debt upon a Lease for yeares, the Defendant said that the Plaintiffe was bound to Reparations by Covenant and because that the Tenements were ruinous, he commanded him to amend the Tenements with the Rent, the which he did, Judgement if Action, &c. and whether this be a good Plea or not. *Quære. 34. H. 6. 17. Br. Debt 27. 14. H. 4. 27. Br. Debt 72. 12. H. 8. 1. Br. Debt 226.*

Whether Debt lyes upon a Fine or an Amerciament in a Leete or not. *Quære. 7. H. 6. 12. Br. Debt 85. 9 E. 4. 40. Br. Debt 114. 10. H. 6. 7. Br. Debt 180. 11. H. 7. 13. Br. Debt 240.*

A man promises 20 l. in Marriage with his Daughter; whether debt lies for it or not. Quare 22. Ass. pl. 70. Br. Debt 131. 10. E. 2. 6. Br. Debt 161. 17. E. 4. 4. Br. Debt 162. 15. E. 4. 32. Br. Debt 105.

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*Deeds Inrolled.*

WHether a Deed inrolled shall be avoided by Duresse or not. Quære 21. E. 3. 43. Br. Faitz Inroll 3. 19. H. 6. 6. Br. Faitz Inroll 4. 7. E. 4. 5. Br. Faitz Inroll 11. 16. H. 7. 5. Br. Faitz Inroll 17.

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*Demands and demandable.*

THe Mannour of B. extends into B. and D. and is demanded *per nomen manoris* in B. whether he shall recover onely that which is in B. or not. Quare 9. E. 4. 17. Br. Demand 50.

Grantee of a Rent to be paid at the house, and if the Rent be behinde,

and lawfully demanded at the House, then to be lawfull for the Grantee to distraine, whether a distresse upon the Land in such case be a sufficient demand or not. *Quære.* See my *Rep. p.* 1. 147. *pl.* 218.

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*Dennizen and Alien.*

AN English man goes beyond the Sea, and marries a Feme alien, whether this makes her of the Allegiance of the King and her Issue inheritable or not *Quære.* Br. *Denizen and Alien* 21. See my Reports *pa.* 91. *pl.* 130.

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*Detinue of Goods.*

A man findes Goods, and delivers them over before Action brought, whether this shall excuse him in an Action of Detinue brought against him for the Goods or not. *Quære.* 27. *H.* 8. 13. Br. *Detinue of Goods*, 1. 39. *H.* 6. 12. Br *Detinue &c.* 33. 12. *E.* 4. 8. Br. *Detinue, &c* 40.

Whether Detinue for Beaſts taken in Withernam lyes or not *Quære.* 11. *H.* 4 10. Br. Detinue of Goods 18.

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*Diſclaimer.*

IN an Avowry againſt a Baron and Feme, whether the Baron and Feme may diſclaime or not. *Quære.* 35. *H.* 6. 10. *Br. Diſclaimer* 6. 43. *E.* 3. 5. *Br. Diſclaimer* 8. 10. *E.* 4. 2. *Br. Deſclaimer* 27. 4. *H.* 5. *Br. Diſclaimer* 36. 14. *H.* 4. 18. *Br. Diſclaimer* 38. 21. *H.* 7. 20. *Br. Diſclaimer* 43. 9. *H.* 6. 52. *Br. Diſclaimer* 44. 14. *H.* 4. 18. *Br. Diſclaimer* 46. 30. *Aſſ. pl.* 10. Br. *Diſclaimer* 50.

A man avowes, and the Plaintiffe acknowledges the Avowry, whether in another Avowry he may diſclaime or not. *Quære.* 2. *E.* 4. 16. *Br. Diſclaimer* 23.

Whether the Demandant may enter upon the Diſclaimer of the Tenant or not. *Quære.* 4. *E.* 4. 38. Br. *Diſclaimer* 24. 5. *E.* 4. 1. Br. *Diſclaimer* 25.

Lord Mesne and Tenant the Mesne cannot disclaime in an Avowry, for he cannot lose the Land of the Tenant; but whether they may joyne in Disclaimer or not. *Quære.* 12. E. 4. 16. *Er. Disclaimer* 30. 9 *H.* 6. 27. Br. *Disclaimer* 1. 21 E 4. 47. Br. *Disclaimer* 31. 11 E 4 13. Br. *Disclaimer* 28. 13. E. 4. 6 Br. *Disclaimer* 42.

*Discontinuance.*

Grandfather, Father, and Sonne, the Grandfather Tenant in Taile makes a Leale to another for his life, and dies, the Father grants the reversion in Fee, the Tenant for life Attournes and dies, the Grantee enters, and after the Father dies, whether this be a discontinuance to the Sonne or not *Quære. Keilway, fo.* 120. *pl.* 68. *Cooke* upon *Littleton, fo.* 333. See *Dyer fo.* 98. *pl.* 55. and *Littleton, Sect.* 637, 638.

Tenant in taile makes a Lease for yeares, the remainder to the Donee in Fee, whether this be a Discontinuance

nuance in Fee or not. *Quære.* 28.*H.*8. *Dyer. fo.* 8. *pl.* 15. *& fo.* 9. *pl.* 121.

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*Dispensation.*

A Man makes a Feoffement upon condition of re-infeoffement, whether acceptance of another Estate than is contained in the Condition, shall be a dispensation of the breach of the condition or not. *Quære.* See *Title Conditions.*

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*Dissi or and Disseisin.*

A Man enters upon the Possession of the King, whether this shall be a disseisin to the Tenant of the Freehold or not. *Quære.* 3. *Mod.* 1. *Br. Disseisor & Disseisin* 59. 1. *H.* 4. 10. *Br. Disseisor & Disseisin* 4.

A Disseisee leavies a Fine to a stranger, whether this gives the right to the Disseisor or not. *Quære.* See Title *Fines of Lands.* 2.

*Distresse.*

WHether a man upon a returne irreplegiable, may worke the distresse or not. *Quære.* 10. & 11. of the Queene *Dyer, fo.* 280. *pl.* 14.

Grantee of a Rent Charge in Fee, distraines for Arrearages, and then grants it over, whether the Arrearages are lost or not. *Quære.* See *Title Arrearages.*

*Distribution.*

WHether the Ordinary, after Debts and Legacies paid, may inforce a Distribution of the residue of the Estate or not. *Quære.* See my *Rep. pa.* 65. *pl.* 162. & *pa.* 93. *pl.* 158. and see *Hobarts Reports.*

*Dower.*

*Dower.*

A Man makes a Leaſe for yeares rendring Rent, and after takes wife and dies, whether ſhe ſhall be indowed of the Rent as well as of the reverſion, or not. *Quere. 1. E 6 Br. Dower 89. Perkins fo. 69. pl. 348.* and *Cooke* upon *Littleton, fo. 32. a.*

Whether a Writ of Dower lies againſt the Committee of a Ward of the King and whether Aſsignement of Dower be good by him or not. *Quere. Keilway, fo. 133. pl. 112.*

*Dureſſe and Manaſſe.*

WHether a Deed inrolled ſhall be avoided by Dureſſe or not. *Quere.* See *Title Deeds inrolled.*

A man makes a Writing by Dureſſe or Manaſſe, and after he being at large, a Defeaſance is made by Deed

indented betwixt the Obligor and Obligee, whether this shall estoppe the Obligor to say that it was made by Duresse, &c. or not. *Quære.* See *Title Estoppell.*

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*Embasement of Monies.*

WHere Monies shall be paid in silver imbased, and who shall beare the losse of it, and who not. *Quære.* And see Title Monies, and Embasement of them, *per tot.*

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*Emblements.*

BAron and Feme Joyntenants, the Baron sowes the Land with Corn and dies, whether the Feme or the Executors of the husband shall have the Corne. *Quære.* 8. *Ass. pl.* 21. *Br. Emblements* 15. 8. F. 3. 54. *Dyer. fo.* 316. *pl.* 2. *Cooke* upon *Littleton, fo.* 55. *b.*

*Entry*

## Entry lawfull.

AN Infant assignes Dower to his Mother, more than the third part, whether he may enter into the purpriage at his full age or not, or whether he is put to his Writ of Admeasurement of Dower or not. *Quære.* 21. H. 7. 29. *Br. Entre congeable*, 44. *and Admeasurement, &c.* 4.

A Man grants a Seigniory for life, the Tenancy escheates, a stranger enters and dies seized, Tenant for life dies, whether the entry of the Lord be taken away, or not. *Quære.* *Kelway, Casus inserti temporis, fo.* 114.

A Tenant for life, the remainder for life, the remainder in fee, Tenant for life makes a Feoffement in Fee, whether he in the remainder for life may enter for the forfeiture or not. *Quære.* Title forfeiture of Lands.

Enfran-

## *Enfranchisement.*

A Nise marries a Freeman, whether by this she be infranchised for ever, or for life onely. *Quere.* And if the Lord marries his Nise, whether this be an Infranchisement for ever or not. *Quere. Cooke* upon *Littleton, fo.* 123. *a. & fo.* 136. *b. &* 137. *b. F. N. B.* 78. *b.* 30. *E.* 1. *Title Villein* 46. 33. *E.* 3. *ibid.* 21. *Doct. & Stud. fo.* 140. *a.* 18. *E.* 3. *ibi.* 30. 46. *E.* 3. 6. *E.* 4. 25. 1. *H.* 4. 6. 13. *E.* 1. *Villen,* 36. 18. *Ass.* 10. *Mirror* 10. 2. *Sect.* 18.

## *Error.*

A Man recovers by Judgement erronious, and dies without Heire, what remedy. *Quere.* 9. *H.* 6. 46. *Br. Error* 9.

Error brought in the Kings Bench upon a Judgement given in an Assize one of the Plaintiffs in the Writ of Error

Error, dies pending the Writ, and notwithstanding Judgement was reversed, upon which the Recoverers in the first Action brought Error in the Kings Bench, and whether this Error lyes upon a Judgement given in the same Court or not. *Quere.* 2. *R.* 3. 1. *a. and* 20. *b.* 7. *H.* 6. 28. *Dyer. fo.* 196. *pl.* 39. *Br. Error* 68. 15. *H.* 4. 7. *Br. Error* 81. 4 *E.* 4. 41. *Br. Error.* 198. *Dyer. fo.* 159 *pl.* 35.

Whether a Writ of Error lyes in an *Ejectione firmæ*, before Judgement given upon the Writ of enquiry, or not. *Quere.* See my Reports, *pa.* 88. *pl.* 142.

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*Escape.*

IF a man who is in Execution be let at large by Commandment of the King, Treasurer, or Chancellor, or by License of the Chiefe Justice, whether this be an Escape or not. *Quere.* 4. *&* 5. *P. & M. Dyer fo.* 162. *pl.* 30. 10. of the Queene *Dyer fo.* 275. *pl.* 46.

46. 12. & 13. of the Queene *Dyer, fo.* 279. *pl.* 24. *Keilway, fo.* 114. *a.* and many other Bookes. See *Br. Escape.*

*Escheate.*

A Tenant is disseised, and dies without Heire, whether the Lord may have a Writ of Escheate or not, because that the Tenant died not seized. *Quære.* Or whether he may enter or not. *Quære. W. H.* 4. 8. *Br. Escheate,* 4. 7. *H.* 4. 10. *Br. Escheate* 5. 4. *H.* 6. 29. *Br. Escheate* 10. 37. *H.* 6. *Br. Escheate* 11. 6. *H.* 7. 9. *Br. Escheate* 16. & 22. 32. *H.* 6. 27. *Br. Escheate* 26. *F. N. B.* 144. *C. Keilway, fo.* 114. *a.* See the 3. *Rep. fo.* 2. & 3.

*Estates.*

A Man recovers a Rent by a Writ of Entry against Tenant in taile of a Rent, which had not being before the Grant made in taile, whether the Recoveror hath a Fee simple

ple or not. *Quære.* 15. E. 4. 6. & See 37. H. 6. 36. & *Com.* 557. *a.* See ile *Kents* 2.

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*Eſtoppell.*

A Man makes a writing by Dureſſe ot Manaſſe, and after he ing at large, a defeaſance is made Deed, indented betwixt the Obgor and the Obligee, whether this all eſtoppe the Obligor to ſay that was made by Dureſſe, &c. or not. ure. 35. H. 6. 18. *Br. Defeaſance* 17. *Eſtoppell* 21. And the Queſtion is o other, but whether the recitall of e obligation by the Deed indented defeaſance, ſhall be an Eſtoppell not, and for this, ſee 9. H. 6. 8. 9. *Eſtoppell*, 5 35. H. 6. 33. Br. *Eſtoppell* 46. E. 3. 12. & 13. *Br. Eſtoppell* 43. E. 3. 14. 15. Br. *Eſtoppell* 49. 18. *Aſſ.* 3. *Br. Eſtoppell* 127. 9. H. 7. 2. 21. 4. 52. 53. Br. *Eſtoppell*, 173. See *Cooke* pon *Littleton*, *fo.* 352. *b.*

*Execu-*

*Executors.*

WHether Executors ſhall have the Glaſſe of windowes or not. *Quere.* 21. *H.* 7. 26. *Br. Chattels &c.* 7.

A Man Covenants for him, not naming his Executors, whether this ſhall binde his Executors or not. *Quere.* 32. *H.* 6. 32. *Br. Covenant* 28. 10. *H.* 7. 18. *Br. Covenant* 50. See *Dyer. fo.* 14 *pl.* 69 *fa.* 114. *pl.* 60. *&* *fo.* 322. *pl.* 25 See *Cooke* upon *Littleton, fo.* 209. *a.*

Whether he which is barred in Debt againſt an Executor upon a fully adminiſtred found againſt him, ſhall have a new Writ of Debt upon Aſſets come after or not *Quere.* 4. *H.* 6. 4. *Br. Debt,* 106. *&* *Executors* 85. 19. *H.* 6. 36. 37. *Br. Executors* 70. 33. *H.* 6. 23. *&* 24. *Br. Executors* 18. 34. *H.* 6. 22. *&* 23. *Br. Executors* 22. See the 8. *Rep. fo.* 134. 1. *b.*

A

A man makes *B.* and *C.* his Executors, proviſo that *B.* ſhall not adminiſter, whether this proviſo be good or not. *Quære.* 19. *H.* 8. 3. *Br. Executor* 2. 3. *H.* 6. 67. *Br. Executor.* 9. *Dyer. fo.* 3. *pl.* 7. 32. *H.* 8. *Br. Executor* 155.

The goods of the Teſtator are taken out of the poſſeſsion of the Executors, whether they ought to joyne or ſever in Action. *Quære.* 42. *E.* 3. 26. *Br. Executors* 31. 2. *H.* 7. 15. 6. *H.* 7. 6, *Br. Executors* 170. 24. *E.* 3. 35. *Br. Executors.* 84.

An Executor grants *omnia bona & catalla ſua*, whether this paſſes the goods of the Teſtator or not. *Quære.* See *Title Grants.* 1.

Whether Executors ſhall be charged as Executors in Detinue brought againſt them upon a baylement made to their Teſtator or not. *Quære, Keilways fo.* 118. *pl.* 62. 3. *H.* 6. 35. *Br. Executors* 10. 41. *E.* 3. 30. 31. *Br. Executors* 28. 39. *E.* 3. 5. *Br. Executors* 92. See the 9. *Rep. fo.* 94.

Admi-

Administration is committed to an Executor durante minori ætate, whether he shall be charged as Executor or as Administrator. Quære. Kelway, fo. 127. pl. 91. 9. E. 4. 33. 47. Br. Executors 90.

Whether Debt lyes against an Executor of an Administrator, or not. Quære. 32. H. 8. Dyer, fo. 47. Br. 32. 34. H. 8. 14. Br. Administration, 7. 24. E. 3. 54. Br. Executors 83. See 1. & 2. P. & M. Dyer, fo. 112. pl. 51. & 4. & 5. P. & M. Dyer. fo. 160. pl. 42. 1. & 2. of the Queene Dyer. fo. 174. pl. 21.

Whether the Executors of the Heire shall be charged in Debt upon an Obligation made by the Ancestor or not. Quære. See Title Heire 1.

Whether the Executor of a Philizer shall have the profits of the Writs which are to be subscribed with his name, or his Successor. Quære. See my Reports pa. 90. pl. 147.

Exin-

WHether unity of possession shall extinguish a way or passage or not, *Quære*. 3. *H.* 6. 31. Br. *Chymin.* 13. 11. *H.* 4. 5. Br. *Extinguishment &c.* 11. 21. *E.* 3. 2. Br. *Extinguishment* 15. See 11. *H.* 7. 25. Br. *Extinguishment* 60. *Hobarts Reports, pa.* 171. *pl.* 170. *Dyer, fo.* 295. *pl.* 19.

A man Obligor marries with the Obligee, and after they are divorced, whether the Obligation be revived or not. *Quære*. 26. *H.* 8. 7. Br. *Coverture, &c.* 82. and *Extinguishment* 1. *Dyer, fo.* 13. *a.* 11. *H.* 7. 4. *b.* Br. *Desaignement & Divorce* 1. & 18. *Hobarts Reports pa.* 114. *pl.* 139. 8. *Rep. fa.* 136. *a.* Cooke upon *Littleton, fo.* 264. 6. *Dyer, fo.* 140. *a. Pl. Com. fo.* 184. *Keilway, fo.* 122. *b.* 11. *H.* 7. 13. See Br. *Assets* by Discent. 1.

Land of *B.* out of which Rent is issuing, is given to another by Act of Parliament, whether the Rent be by this extinguished or not. *Quære*. 21.

H. 7. 3. Br. Parliament, &c. 28.

A Feme sole makes a Lease for yeares, the Lessee commits waste, and after the Lessor and the Lessee intermary, and after are divorced, whether the action of waste be revived againe or not. Quere. Keilway, fo. 122. pl. 75. See supra, pl. 2.

Where a Condition shall be extinguished, and where onely suspended. See Title Conditions, 9.

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*Feoffements of Lands.*

A Feoffment made by one joyntenant to his Compagnion, shall inure by way of confirmation by Newton. Quere. 22. H. 16. 42. 43. Br. Confirmation 11. See Br. Feoffements, &c. ult.

A man makes a Feoffment of the Manhour of D. in D. cum pertinentiis, whether the Manhour of D. extending into D. and S. or nothing but that

which is in D. onely, or whether all the Mannour shall passe or not. *Quære.* 7. *H.* 4. 27. *Br. Feoffements of Lands,* 95. 9. *E.* 4. 6. & 17. *Br. Feoffements, &c.* 69.

Whether a man *surdus & mutus* may make a Feoffement or not. *Quære.* 34. & 35. *H.* 8. *Dyer, fo.* 55. *pl.* 12. *Cooke* upon *Littleton, fo.* 42. *b. Perkins Title Grants pl.* 25. 2. *H.* 4. 8. *Br. Feoffements &c.* 7.

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*Fines leavied of Lands.*

WHether by a Grant of conusance of Pleas and of executions thereupon, a man may leavie Fines or not. *Quære.* 44. *E.* 3. 38. *Br. Fines, &c.* 22.

A Disseisee levies a Fine to a stranger, whether this gives the right to the Disseisor or not. *Quære.* 2. *Rep. fo.* 56. *a.* 8. *Rep. fo.* 90. *b.* 6. *Rep. fo.* 70. *a.* See my Reports, *pa.* 105. *pl.* 180.

Tenant for life, the reversion to an Ideot, an Uncle Heire apparent to the Ideot, leavies a Fine and dies, Tenant for life dies, the Ideot dies, whether the Issue of the Uncle who leavied the Fine, shall be barred by it, or not, *Quære.* See my *Reports, pa.* 94. *pl.* 164 *& pa.* 146. *pl.* 216.

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*Forfeiture of Lands, and Goods, and Offices.*

WHether an Attachment in a Court Baron be forfeited by non-appearance of the party or not. *Quære.* 18. *H.* 6. 9. Br. *Attachment, &c.* 21. 34 *H.* 6. 49. Br. *Attachment, &c.* 19.

Whether a Gardein of a Prison shall forfeit his Office by an Escape in the night or not. *Quære.* 5. *E.* 4. 96. Br. *Forfeiture, &c.* 54.

Tenant for life, the remainder for life, the remainder in Fee, Tenant for life makes a Feoffement in Fee, whether he in the remainder for life may

may enter for the forfeiture or not. *Quære.* *Cooke* upon *Littleton*, *fo.* 252. *a.* *Dyer*, *fo.* 339. *pl.* 44. 29. *Ass.* *pl.* 64. 40. & 45. & 50. *Ass.* See *Littleton*, *sect.* 416. & 1. *Rep.* *fo.* 76. *a. b.*

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*Gardian in Socage.*

TEnant in Socage deviſes by his will, the cuſtodie of his Heire apparent within age to *b.* whether this ſhall barre the Gardian in Socage or not. *Quære.* *Keilway*, *fol.* 186. *pl.* 1.

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*Grants of Common perſons.*

AN Executor grants *omnia bona & catalla ſua*, whether this ſhall paſſe the goods of the Teſtator or not. *Quære.* 10. E. 4. 1. Br. *Grants* 96. 46. E. 3. 18. *Br. Grants* 21. 24, E. 3. 35. *Br. Executors* 84. See my Reports, *pa.* 205.

An Abbot hath an Advowson appropriate, which hath a Vicarage endowed, and grants the Church and Advowson, whether by this the Advowson of the Vicarage, shall passe or not *Quære.* 16. *E.* 3. *Br. Judgements* 138. See 40. *E.* 3. 28. *Br. Jurisdiction* 5. and *Juris utrum* 2.

A man grants *omnia bona & catalla sua*, whether by this an Obligation shall passe or not *Quære.* 25. *H.* 8. *Dyer, fo.* 5. *pl.* 3. 36. 37. *H.* 8. *fo.* 59. *pl.* 15. 21. *H.* 6. *fo.* 30. 8. *Rep. fo.* 33. *a. b.* 4. *E.* 6. *Br. Grants* 51. 39 *H.* 6. 35. *Br. Grants* 62. 4. *H.* 7. 10. *Br. Grants* 84.

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*Grants of the King.*

THe King grants a Mannour *hominibus de suis heredibus & successoribus suis*, rendring Rent *Quære.* whether this shall make them a Corporation or not; and *Quære*, if it were without rendring Rent. 21. *E.* 4. 55. 56. *Br. Corporations, &c.* 65. 2. *H.* 7. 13. *Br. Pattents* 44. 7. *E.* 4. 30. *Br. Pattents* 62. 7. *E.* 4.

E. 4. 14. *Br. Pattents* 85. *Dyer. fo.* 100. *pl.* 70.

The King grants an Escheate *cum acciderit*, whether the Grant be good or not. *Quære.* 1. & 2. *P. & M. Dyer. fo.* 108. *pl.* 30.

The King grants a Copy-hold for life generally, whether this destroyes the Copy hold, or not. *Quære.* See my Keports, *pa.* 226. *pl.* 246.

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*Heire.*

VVHether the Heire of the Heire, or the Executors of the Heire, shall be charged in Debt upon an Obligation made by the Ancestor or not. *Quere. Pl. Com. fo.* 441. *a.* 22. of the Queene *Dyer, fo.* 368. *pl.* 46.

*Incertainty.*

A Man Distraines by two Horses, the one worth 10 *l.* the other 40 *s.* and avowes the one for one Rent day, the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other against him, of which horse he shall have a retourne. *Quere.* 2. *H.* 6. *fo.* 3. *a.* See 2. *H.* 6. 17. Br. *Retourne de avers* 1.

*Instance and Instant.*

A Copie-holder for life Heriotable, the Lord grants the Seigniory for 99. yeares, if the Tenant should live so long. the Tenant dies, whether the Grantee for 99. yeares shall have the Heriot by force of this instant any title, or not. *Quere.* See my Reports, *pa.* 23. *pl.* 52.

*Joynder*

## Joynder in Action.

The Goods of the Teſtator are taken out of the poſſeſsion of the Executors, whether they ought to joyne or ſever in action. *Quere.* 42. E. 3. 26. *Br. Executors* 31. 2. *H.* 7. 15. 6. *H.* 7. 6. *Br. Executors* 170.

A promiſe is made to a Baron of a Feme Executrix, in that Right as Executrix, whether they may joyne in action or not. *Quere.* See my Reports, *pa.* 72. *pl.* 110.

## Joyntenants, &c.

IT is enacted by Parliament, That all Eſtates made to *I. N.* ſhall be void; an Eſtate is made to *I. N.* and his wife, whether this ſhall be void the wife ſurviving or not. *Quere.* 5. *H.* 7. 30. *Br. Joyntenants, &c.* 67.

Two

Two Joyntenants for life, the one makes a Leaſe for yeares, to commence after his death, and dies, whether this ſhall binde the Survivor or not. *Quære*, *Pl. Com. fo.* 263. *b.* *Cooke upon Littleton, fo.* 184. *b.* 185. *a Littleton, Sect.* 289. *Cooke upon Littleton, fo.* 186. *a. b.* See *Dyer, fo.* 69. *pl.* 30. *and* 279. *pl.* 7. *and* 187. *pl.* 5.

Two Joyntenants, the one grants a Rent to his compagnion in Fee, whether the Grant be good or not. *Quære*, *Keilway, fo.* 728. *pl.* 95.

A man poſſeſſed of a tearme for yeares, deviſed by his Teſtament, the terme to his two Sons equally, whether they be Joyntenants, or Tenants in Common. *Quære.* 28. *H.* 8. *Dyer. fo.* 25. *pl.* 158. See *Ratcliffs Caſe*, 3. *Rep. fo.* 39. *b.*

An Obligation of 200 *l.* is made to two *ſolvend. e's ſc.* the one hundred pounds to one of them, and the other hundred pounds to the other, the one of the Obligees dies, and his Exe-

cutors

tors sue for the one hundrtd pounds, whether the intier 200 *l.* accrues to the Survivor or not. *Quære.* 18. of the Queene *Dyer*, *fo.* 347. *pl.* 20. See *fo.* 165. *in. pl.* 43.

*Justification.*

GRantee of a Rent Charge in Fee, distraines for Arrearages, and then grants it over whether he ought to avow or justifie. *Quære.* my Reports, *pa.* 103. *pl.* 178.

*King and Queene.*

THe King grants Land to the Queene in Fee, whether this be good Grant or not *Quære.* the Book of Entries 97. 98. *Pl. Com. fo.* 206. *Stanton's Case.* See the Epistle to the *Rep.* 3. *H.* 7. *cap.* 14 *lib.* 49 *E.* 40. *Br. title inalienability.* See 34. *H.* 6. 34. *Pl. Com. fo.* 245. 247. 234. 35. *H.* 6. 38. *Inst.* 17. *E.* 3. *b.* 7. *H.* 7. 7. 18. *E.* 3. 13. *Rep. Clarkes Case* 4. *Rep. Vernons Case*,

8 of

8. of the Queene *Dyer, fo.* 248. 4. *Rep.* 3. 6. (againſt *Br.* 6. *E.* 6. *Dower* 69.) 23. *E.* 3. 22. 1. *E.* 3. 4. 9. *E.* 3. 33.

The Queene an Infant makes a Feoffement in Fee, whether this be good or not. *Quere. Cooke* upon *Littleton, fo.* 3. *a.* 133. *a. b.* 131. *a.* 127. *a. and* 31. *b.* 26. *Aſſ. pl.* 54. 3. *H.* 6. 55. 11. *H.* 6. 32. *Pl. Com. fo.* 213. *&* 221. *F. N. B. fo.* 43. 15. *E.* 4. 16. 38. *E.* 3. 2. *Dyer, fo.* 203. 27. *Aſſ. pl.* 4. 5. *Rep. fo.* 27. 18. *E.* 4. 10. 21. *E.* 4. 13. 8. *Rep.* 173. 6. *Rep.* 74. 27. *H.* 8. 1. 17. *E.* 3. 17. *Stamfords* Pleas of the Crowne, 61. 3. *H.* 7. 14. 21. *H.* 7. 8. 5. *Rep. fo.* 56. *a.* 9. *E.* 3. 33. 3. *H.* 7. 14. *b.*

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*Lacheſſe.*

If the King hath a preſentation in any other Right then in the Right of the Crowne, whether Laps ſhall incurre againſt him, as againſt any other perſon or not. *Quere. Regiſter, fo.* 31. *a. Br. preſentments al Eſgliſes* 156.

*Leaſes.*

*Leaser.*

A man covenants that another hall have his Land for twenty yeares, whether this amounts to a Leaſe or ot. *Quere.* 21. *H.* 7. 37. *Br. Covenant,* b. *and Leaſe* 21. 37. *H.* 8. *&* 1. *E.* 6. *Br. Leaſe* 60. See *Dyer, fo.* 372 *b. pl.* 11. *& fo,* 150. *pl.* 83. See *Hobarts Reports, pa.* 88. *b.* 49. *a.*

A man makes a Leaſe for yeares rendring Rent to himſelfe during the Tearme, and dies, whether his Heire hall have debt for the Rent arere after or not. *Quare.* See Title Reſervation 1.

A Biſhop makes a Leaſe to two for yeares rendring Rent, after makes new Leaſe with confirmation of the Deane and Chapter to one of them, nd dies, whether by his death the irſt Leaſe be wholly void or not. *Quere.* 32. *H.* 8. *Dyer, fo.* 46. *pl.* 9.

A man

A man makes a Lease for yeares, upon condition that if the Lessee aliens the terme, that then it should be lawfull to the Lessor, &c to enter, the Lessee aliens the terme, the Lessor before entry makes a Lease for yeares, whether the Lease be good or not. *Quære.* 28. *H.* 8. *Dyer, fo.* 6 *pl.* 1. *& fo.* 7. *pl.* 6. *Pl. Com. fo.* 131. 132. 133. *&c.*

Tenant in taile makes a Lease for yeares to commence after his death, rendring Rent, and diess the Issue accepts the Rent, whether this shall barre his entry or not. *Quære. Dyer, fo.* 279. *pl.* 71. *fo.* 69. *pl.* 130. *& fo.* 246. *pl.* 69. Cole upon *Littleton, fo.* 4[illegible]. *Pl. Com. fo.* 430 See *Dyer, fo.* 357. *pl.* 43 the like case.

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*License.*

A Feme sole Licenses a man to hunt in her Warren, and after takes husband, whether by the intermarriage, the License be determined

or

or not. *Quære.* 22. *H.* 6. 52. *Br. Licenses* 6.

A man licenses another to hunt and kill a Buck in his Parke, whether by force of this License he may take it away with him or not. *Quære.* 18. *E.* 4. 14. *Br. Licenses, &c.* 12. and 6. And *Quære.* whether he may kill it by his servant or not. See 23 *H.* 8. *Br. Patents* 76. & 12, *H.* 7. 25. *Br. Property* 41. for the first case, and See 21. *H.* 7. 13. *Br. Trespasse,* 207. 13. *H.* 7. 10. *Br. Trespasse* 431.

*Livery and Seisin.*

A Man makes a Feoffement and a Letter of Attorney to make livery absolutely, and he makes livery upon condition, whether this livery be void or not. *Quære.* 12. *Ass. pl.* 24. *Br. Disseisor &c.* 33. *and Feoffements* 25. *Cooke upon Littleton, fo.* 250. *a. b. Perk. fo.* 39. *pl.* 192. *Cooke upon Littleton, fo.* 52. *a. b.* 26. *Ass. pl.* 39. *Br. Feoffments* 27.

A

A man infeoffes two, and makes a Letter of Attorney to one of them to make Livery to the other in the name of both, and he doth it, whether he that makes the livery doth take any thing by it or not. *Quere.* 3. *H.* 6. 43. *Br. Attorney* 5. *Perkins*, *fo.* 41, *a.*

A man seized of a House and Close makes a Lease for years of the House, and after makes a Feoffement of the House and Close, and delivers Seisin in the House (the Wife and Infants of the Termor being in the House) in the name of all, agreed that the House shall not passe, but whether the Close being within the view, shall passe or not. *Quære.* 28. *H.* 8. *Dyer*, *fo.* 18. *pl.* 107, 108.

A Letter of Attorney is made to three to make livery, *conjunctim & divisim*, two make livery, the third being present, not doing or saying any thing, whether this be a good livery or not. *Quere.* 38. *H.* 8. *Dyer*, *fo.* 62. *pl.* 34.

A. Lessee

Leſſee for yeares makes a Feoffement, and a Letter of Attorney to make Livery, and after the Attorney delivers Seiſin, the Leſſor being preſent upon the Land, not contradicting, whether the Land paſſes by this Feoffement or not. *Quære. Dyer, fo.* 362. *pl.* 20. *&* 354. *pl.* 35.

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*Maintenance.*

A Man buyes a Title thus, That if he can recover it, he ſhall pay two hundred pounds, otherwiſe nothing; whether this be maintenance punishable at the Common-Law or not. *Quære. Hobarts* Reports, *fo.* 157. *pl.* 141.

*Monies, and embaſement of them.*

A Man bound to pay money by ſpeciality, tenders the money at the day of payment, which is refuſed, and after the money is debaſed, who ſhall beare the loſſe of it. *Quære.* 7. E. 6. *Dyer, fo.* 83. *pl.* 76. See before in *Dyer, pl.* 69. 70. 73. 74. 75. and *Davis Reports, fo.* 27, 28.

A man bequeatheth by his will money to another, after baſe money is eſtabliſhed, whether the Legacy may be paid in this baſe money or not. *Quære. Davis Reports, fo.* 27. *b.*

A man hath a thouſand pound pure ſilver in marriage with his wife, who after are divorſed *cauſa præ-contractus*. Or a man recovers by erronious judgement an hundred pound in debt, and hath execution in pure ſilver, after the judgement is reverſed, if baſe money be eſtabliſhed in the meane time; whether reſtitution in theſe caſes

cases may be of base money or not. *Quere. Davis Reports, fo.* 27. *b.* 28. *a.*

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*Mortmaine.*

IF a Rent be granted to an Abbot and his Successors for eighty yeers; whether this be *Mortmaine* or not. *Quere.* 4. *H.* 6. 9. Br. *Mortmaine* 15. *Pl. Com. fo.* 87. *a.*

Whether the alienation of one spirituall or religious man to another spirituall man, be *Mortmaine* or not. *Quere. Keilway, fo.* 111. *pl.* 37. 21. *E.* 3. 5. Br. *Mortmaine* 12. 11. *H.* 4. 88. Br. *Mortmaine* 18. 16. *Ass. pl.* 1. Br. *Mortmaine* 19.

Whether a Lord that is disseised at the time of the alienation in *Mortmaine*, shall have a yeare after his entry, for to enter for *Mortmaine*, or not. *Quere. Keilway, fo.* 111. *pl.* 83.

*Non est factum.*

TWo are bound in an Obligation, and the Seale of one of them is broken off, in an action brought against the other, whether he may pleade *Non est factum*, or not. *Quære.* 3. *H.* 7. 15. *Br. Non est factum* 21. See my *Reports*, *pa.* 125. *pl.* 203.

*Obligation.*

A Man was bound to *I. N.* that he should not use his Art in *D.* by two yeares, and by *Hull* this Obligation is against Law. *Quære* of this, because that the restriction goes only to *D.* which is not a totall restriction. 2. *H.* 5. 5. *Br. Faits* 93. and *Obligation* 85. See the 8. *Rep. fo.* 125. *b.* and the 11. *Rep. fo.* 53. *b.* and see my *Reports*, *pa.* 77. *pl.* 121. *pa.* 191. *pl.* 238.

Two are bound in a Bond, and the Seale of one is broken off, whether this

this ſhall avoid the whole deed, ſo that in an action brought againſt the other, he may pleade *non eſt factum*, or not. *Quære.* 3. *H.* 7. 15. *Br. Non eſt factum*, 21. See my Reports *pa.* 125. *pl.* 205.

A man is bound to a Baron and Feme, the Baron makes the wife Executrix and dies, whether the wife may bring an action as Executrix to the Baron, or whether ſhe ought to bring it, *Nomine proprio*, as Survivor, or not. *Quære.* 4. *H.* 6. 5. *Br. Obligation* 35.

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*Occupans & Occupanti Conceditur.*

A Leaſe is made to one, his Executors, and aſsignes *pur auter vie*, the Leſſee makes a Leaſe for yeares, rendring Rent to him, his Executors and Aſsignes, and dies. *Quære.* Whether the Leſſee for yeares ſhall be an Occupant, and the Rent extinct; or whether that the Freehold ſhall re-

vert to the first Lessor, and the terme be in esse 15. and 16. of the Queene *Dyer, fo.* 328. *pl.* 10. and see 38. *H.* 6. 4. And *Quere* in this case whether the Executor shall be a speciall Occupant, or not.

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*Outlawry.*

IN Debt brought against an Executor, he pleads *Outlawry* in the Testator, whether this be a good plea or not. *Quere.* 8. E. 4. 6. Br. *Utlagery*, 49. 3. *H.* 6. 17. and 32. 32. *H.* 6. 27.

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*Parcell and not Parcell.*

WHether a hundred may be parcell of a Manour or not. *Quere.* 27. *H.* 6. 2. Br. *Parcel, &c.* 2. and Br. *Scire facias*, 7. *Keilway, fo.* 151. *pl.* 51.

Whether an Annuity may be parcell of a Priory or not. *Quere.* 22. E. 4. 44. Br. *Parcell, &c.* 26.

*Possibility.*

## Possibility.

A. By Indenture infeoffes *B.* of black acre, to the use of *A.* for life, the remainder in taile to *C.* the remainder in fee to *D.* with a proviso, if *E.* dies without issue, that *A.* at any time by Indenture sealed, &c. in presence of foure witnesses, may alter, &c. any use, &c. *A.* by Indenture renounces Surrenders, Releases, &c. to *B. C.* and *D.* the said Power, Condition, Authority, &c. *E.* dies without issue, *A.* by Indenture in presence of 4. Revokes the first uses, and limits new, whether this release of a future possibility, or power of revocation shall barre it or not. *Quere.* 1. *Rep. Albanies Case. Cooke* upon *Littleton*, *fo.* 265. *b.*

*Presentments to Churches.*

A Presentment is divolved to a Bishop by Lapse, who is deprived, whether the Metropolitan or the King shall present. *Quære.* 7. E. 6. *Dyer, fo.* 87. *pl.* 103.

*Prohibition.*

A Man devises that his Executors shall sell his Land, and of the Monies shall give such portions to his Daughters, the Legatees sue in Court Christian for their portions, whether a Prohibition lyes or not. *Quære.* 4. and 5. *P.* and *M. Dyer, fo.* 151. *pl.* 5. *Trin.* 9. of the Queene *Dyer, fo.* 264. *pl.* 41. See *Hobarts Reports, pa.* 371. *pl.* 343.

*Ration-*

*Rationabile parte bonorum.*

WHether it be *Communis lex Angliæ*, for women and Infants to have their reasonable part of the Goods of the Defuncte or not. *Quære.* See *Br. Rationabile parte bonorum per totum*, and see *F. N. B.* the Writ of *Rationabile parte bonorum.*

*Recognizance*

WHether the Commons House of Parliament may take a Recognizance or not. *Quære.* 1. *H.* 7. 20. *Br. Recognizance* 8.

*Record, and matter of that.*

A Man brought Debt upon a Recovery in a Court Baron, whether the Defendant may pleade *Nul tiel Record*, or whether he ought to say, *Nul tiel Recovery* or not. *Quære.* 34. *H.* 6.

*H.* 6. 49. *Br. Court Baron, &c.* 1. 34. *H.* 6. 42. *Br. Court Baron* 14. 9. *E.* 4. 14. *Br. Court Baron* 16. 28, *Ass. pl.* 14. *Br. Record, &c.* 66. *F. N. B. fo.* 71. *Br. Recorde &c.* 70. See my Reports, *pag.* 15. *l.* 35.

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*Relation.*

THe Father is disseised, the Sonne makes a Release, and delivers it as an Escroule, to be delivered over to the Disseisor at the death of the Father, the Father dies, the Deed is bayled to the Disseisor; whether this second Delivery shall relate to the first, and so avoid the Deed or not. *Quære.* 35. *H.* 8. *Dyer, fo.* 57. *pl.* 23. See the 3. *Rep. fo.* 35. *b.* See *Title Countermand* 1.

*Releases*

*Releaſes.*

WHether a Releaſe of a right upon a condition ſubſequent be good or not. *Quære.* See Title Conditions.

Whether a Releaſe of all Actions reall, be a good Barre in an Annuity or not. *Quære. Cooke* upon *Littleton, f.* 374. *b, Dyer, fo.* 140. *pl.* 40. 19. *H.* 6. 57. 2. *H.* 4. 13. *Br. Annuity,* 13. & 43. *L.* 5. *E.* 4. 40. *Br. Annuity* 34. 21. *E.* 4. 83. *Br. Annuity* 39. 11. *H.* 7. 20. *Br. Annuity* 54 *Cooke* upon *Littleton, fo.* 2. *a.* and 285. *a.*

Feme Diſſeiſoreſſe takes husband, the Diſſeiſee releaſes to the Baron and his Heires, whether this ſhall inure to him or to his wife, or not. *Quære.* 14. *H.* 8. 4. 21. *H.* 6. 41. *Keilway, fo.* 129. *a.*

A. By Indenture infeoffes B. of black Acre, to the uſe of *A.* for life,

life, the remainder in taile to *C.* the remainder in Fee to *D.* with a proviso, if *E.* dies without Issue, that *A.* at any time by Indenture sealed, &c. in presence of foure Witnesses, may alter, &c. any use &c. *A.* by Indenture renounces Surrenders, Releases, &c. to B. *C.* and *D.* the said power, condition, authority, &c. *b.* dies without Issue, *A.* by Indenture in presence of foure Witnesses, revokes the first uses, and limits new, whether this release of a future possibility, or power of revocation, shall barre it or not *Quere.* 1. *Rep. Albanis Case. Cooke* upon *Littleton, fo.* 265. *b.*

Two men are bound joyntly and severally to a third, who sues the Bond, against both, and after appearance enters a Retraxit against one of them, whether this shall amount to a Release, so that it shall discharge the other or not. *Quere.* See my Reports *pa.* 95. *pl.* 165.

Where one Coparcener of a Rent marries the Ter-tenant, and the other releases

releases to the husband and wife, how it shall inure. *Quære. Cooke* upon *Littleton, fo.* 273. *b.*

Where the Feme Mesne and the Tenant entermarry, and the Lord Paramount releases to the husband and wife, how it shall inure. *Quære. Cooke* upon *Littleton, fo.* 280. *a.*

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*Remainder.*

WHether there may be a Remainder of a Rent *de novo*, or not. *Quære.* See *Title Rents* 2.

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*Remitter.*

TEnant in Taile infeoffes his Issue inheritable to the Taile within age, who at full age makes a Lease for yeares, Tenant in Taile dies, whether the Lease be avoided by the Remittor or not. *Quære. Cooke* upon *Littleton, fo.* 349. *a.* 33. *H.* 8. *Dyer, fo.* 51. *b.*

*Rents.*

## Rents.

WHether a Rent granted out of customary Lands, as out of Lands devisable, Gavelkinde or Borough English, or the like, shall be of the nature of the Land, or not. *Quære.* 22. *Ass. pl.* 78. Br. *Customes* 34. and *Rents* 13. 26. *H.* 8. 4. Br. *Customes* 1. 21. *H.* 6. 10 and 11. Br. *Customes* 24. 4. *E.* 3. 32. Br. *Customes* 58. 14. *H.* 8 7. Br. *Customes* 65. and Br. *Rents* 6. and 20. 26. *H.* 8. *Dyer. pl.* 1. and *fo.* 140. *pl.* 28. and 153. *pl.* 11. and 192. *pl.* 23. See *Cooke* upon *Littleton, fo.* 111. *a.* for devise of a Rent see now the Statute.

Whether there may be a remainder of a Rent *de novo*, or not. *Quære.* 7. *H.* 4. 4. Br. *Done & Remainder* 8. 15. *E.* 4. 9. Br. *Done & Remainder*, 54. 8. *H.* 4. 19. Br. *Done & Remainder*, 58. *Pl. Com. fo.* 35. a. *Cooke* upon *Littleton, fo.* 298. *a.* 2. *Rep. fol.* 70. 76. and 78. 3. *E.* 3. See *Cooke* upon *Littleton*, before, 14. *H.* 7. 2. Br. *Surrender* 16. And see the case immediately following. A

A man recovers a Rent by Writ of Entry againſt Tenant in Taile of a Rent which had not being before the Grant made in Taile, whether the Recoveror ſhall have a Fee ſimple or not. *Quere.* 15. E. 4. 6. and 8. See 37. H. 6. 36 and *Pl. Com. fo.* 557. *a.*

Land of *B.* out of which a Rent is iſſuing, is given to another by Act of Parliament; whether the Rent be by this extinguiſhed or not. *Quere.* 21. H. 7. 3. Br. *Parliament* 28.

The Lord receives his Rent upon *Chriſtmas* day before dinner, and dies after dinner, and the Lord holds of the King, whether the King ſhall have the Rents of the Tenants arreare or not. *Quere.* 44. E. 3. 3. Br. *Preſentments to Churches* 4. and Br. *Rents* 2.

A man makes a Leaſe for yeares rendring Rent to himſelfe during the terme, and dies, whether his Heire ſhall have debt for the Rent arreare after, or not. *Quare.* See *Title reſervations.*

*Requeſts.*

*Requests.*

A. is bound to *B.* to deliver to him two hundred weight of Hops, and *B.* to chuse them out of twenty foure bags, &c. whether *B.* is bound to request *A.* to shew the bags for him to make his Election or not. *Quere.* See my Reports, *pa.* 74. *pl.* 113.

*Remitter.*

TEnant in Taile infeoffes his Son and Heire inheritable to the Taile, within age at the time of the Feoffement; who at full age makes a Lease for yeares by Deed Indented, or Deed Poll of the Land, and then Tenant in Taile dies, so that he is remitted, whether he shall avoid the Lease or not. *Quere Cooke* upon *Littleton, fo.* 349. *a.* 33. *H.* 8. *Dyer. fo.* 51. *b.* See *Littleton, Sect.* 289.

A husband discontinues the Land of

of his wife, and goeth beyond Sea and the Discontinuee lets the same Land to the wife for terme of her life, and delivers seisin to her, and after the husband comes back, and dis agrees to the Lease and Livery of Seisin made to his wife in his absence; whether this shall ouste the wife of her Remitter, or not. *Quare, Littleton Sect.* 677. See *Cooke* thereupon.

A Husband discontinues the Lands of his wife, and the discontinuee is disseised, by the coven and consent of the husband and wife, and after the Disseisor letteth the same Lands to the husband and wife for life, whether in this case the wife shall be remitted or not. *Quare. Littleton, Sect.* 678. See *Cooke* thereupon, *fo.* 357. *b.*

Two Joyntenants in Fee, the one of full age, the other within age, are disseised, and the Disseisor dies seised, and his Issue enters, the Joyntenant of full age dies; whether the Infant surviving may enter into the whole or not. *Quare.* See *Littleton, sect.* 696. and *Cooke* thereupon, *fo.* 364. *b.*

*Reservations.*

A Man makes a Lease for yeares, rendring Rent to himselfe during the terme, and dies; whether his Heire shall have Debt for Rent arreare after, or not. *Quære.* 27. *H.* 8. 19. *Perkins* 697. 698. 699. 22 *H.* 7. *fo.* 88. *b. Keilway*, 5. *Rep. fo.* 111. *a. Malleries Case, Pl. Com. fo.* 171. *a.* 21. *H.* 7. 25. 30. *H.* 8. *Dyer, fo.* 45. *Cooke* upon *Littleton, fo.* 47. *a. q.*

Whether a condition of re entry may be reserved to the Heire, not naming the Ancestor, or not. *Quære.* for I doubt of it, upon the words of *Littleton, sect.* 346. and 343. See *Cooke* thereupon, *fo.* 213. and 214.

*Returne of Beasts.*

A Man distreines by two Horses, the one worth 10*l.* and the other 40*s.* and he avowes the one for one Rent

Rent day, and the other for another, not making mention which for the one, nor which for the other, and the one is found for him the other against him. *Quære*, of which horse he shall have returne. 2. *H.* 6. *fo.* 3. See 8. *H.* 6. 17. *Br. Retraxit & error* 3.

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*Revocation.*

THe King presents his Clerke to a Benefice, and before institution presents another, whether this be a revocation of the former presentation, or not. *Quære.* See my *Rep. pa.* 86.

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*Seisin.*

A Man who hath a Rent grants it over upon condition, the condition is broken: whether the Grantor shall have an Assize for the Rent after arreare, without a new Seisin, or not. *Quære. M.* 15. E. 3. Br. *Title Assize* 407. *Cooke* upon *Littleton*, *fo.* 202. *b.* 15. *Ass.* 12.

A man hath Iſſue a Sonne and a Daughter by one venter, and a Sonne by another venter, and makes a Leaſe for life rendring Rent and dies; whether the receit of the Rent ſhall be a ſufficient Seiſin to make a *poſſeſſio fratris*, ſo that the Daughter ſhall inherit or not. *Quære.* 35. *Aſſ. Pl.* 2. *Cooke* upon *Littleton*, *fo.* 15. *a.* 14. *E.* 2. *Br. Seiſin* 43.

A man dies ſeized of ſeverall acres of Land in one County, his Heire enters generally in one of the Acres, whether this gives poſſeſſion of the other Acres or not. *Quære*, 21. *H.* 7. 33. *a. Cooke* upon *Littleton*, *fo.* 15. *a. b.* See 39. *Aſſ. pl.* 16.

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Statute.

WHether a Baron of the Realme may acknowledge a Statute or not *Quære*. See 5 *E.* 4. 108. 8. *R.* 2. *proceſ.* 224. 5. *E.* 4. 100. *a.* 9. *E.* 3. *Bre.* 473. 39 *E.* 3. 35. *b. Dyer*, *fo.* 360. 9. *Rep.* *fo.* 117. 10. *H.* 4. 15. *D.* 1. *H.* 5. 14. 27.

*H.* 8. 22. 14. *H.* 7. 21. 26. *H.* 8. 7. 14. *H.* 6. 2. 27. *H.* 8. 22 35. *H.* 6. 146. *Dyer, fo.* 314. 48. *Ass. pl.* 6. 27. *E.* 3. *ca.* 1. *de premunire.* 15. *H.* 7. 9. *b.* 9 *E.* 4 *fo.* 2. 6. *Rep. fo.* 52. 15. *E.* 3. *ca.* 26. 5. *H* 4. *ca.* 8. 3. *H.* 6. *fo.* 48. *per Cockin,* 9 *Rep. fo.* 69. 12 *H.* 7. 25. To the objection, that if a Baron cannot acknowledge a Statute, that it is void if he ſhall anſwer, 'tis not void, for debt lies. 7. *E.* 4. 27. or 24. *F. N. B.* 122. 22. *E.* 4. 22.

*Surrender.*

A Termor agrees, that his Leſſor ſhall make a Feoffement to a ſtranger, whether this be a ſurrender or not. *Quere.* 21. *H.* 7. 7. Br. *Surrender* 48. 28. *&* 29 *H.* 8. *Dyer, fa.* 33. *pl.* 13. 14, 15, 16. See 10 *E.* 3. 24. Br. *Surrender,* 1. 8. *Ass. br. Surrender* 25. 40. *Ass. pl.* 16. *Br. Surrender,* 35. See *Dyer, fo.* 363. *pl.* 22. *Cooke* upon *Littleton, fo.* 48 *b.*

The King Leaſes a Meſſuage for yeares rendring Rent, the Leſſee aſ-

ter takes a patent of the office of the custody of the said messuage; whether the terme be surrendered or not. *Quere. Pasch.* 3. of the Queene *Dyer, fo.* 200. *pl.* 62.

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## *Taile.*

GRandfather, Father and Sonne, Lands are given to the Grandfather and to his Heires begotten by the Father. the Father dieth. the Grandfather dieth. whether the Son be in as Heire to the Grandfather begotten upon the body of his Father; and whether the wife of the Grandfather in that case shall be endowed or not. *Quere.* 12. *H.* 4. 2. *per Harson. Cooke* upon *Littleton, fo.* 20. *b.*

Lands are given to a man and his wife, and to one Heire of their bodies lawfully begotten, and to one Heire of the bodie of that Heire only; whether this be an Estate Taile or not. *Quere.* for I doubt of it 39. *Ass pl.* 20. 20. *H.* 6. 35. 5. *H.* 4. 7. *b.* 14. *H.*

14. H. 4. 15. *Littleton, sect.* 13. and *Cooke* thereupon, *fo.* 19. *a.* and *fo.* 20. *a. b* and *fo.* 22. *a.*

A man gives Land to another, & *heredi masculo de corpore suo*, what Estate this is. *Quære. Vide Registrum judiciale, fo.* 6.

A man devises Land to a man, and to the Heires Males of his body, who hath Issue a Daughter, who hath Issue a Son, whether this Son be inheritable by force of this Devise, or not. *Quære.* See *Littleton, sect.* 719. 1. H. 6. 2. 11. H. 6. 13. 14. 28. H. 6. *Title Devise* 18. *Statham. Pl. Com. fo.* 414. *b.* 20. H. 6. 43. 37. H. 8. *Br. Title Dane & Remainder* 61. *Title Nosme*, 1. & 40. *Perkins* 506. *Cooke* upon *Littleton, fo.* 25. *a. b.*

Lands are devised to one for life, the remainder to the next Heire Male of B. in taile, *b.* hath Issue two Daughters, and each of them hath Issue a Son, and the Father and Daughters die; whether the remainder be void for the incertainty whether the eldest

shall take it because he is worthiest or whether both of them shall take, for that they both make but one Heire. *Quere.* 11. *H.* 6. 13. 9. *H.* 6. 25. *Cooke* upon *Littleton, fo.* 25. *b.*

Land is given to the Son, and to the Heires of the body of his Father (then dead) ingendered, this is a good Taile in him, but whether his younger brother shall inherit by force of this gift, or not. *Quære. Mr.* 4. *&* 5. *P. & M. Dyer, fo.* 156. *l.* 24. 25. *Cooke* upon *Littleton, fo.* 26. *b. Hill.* 8. of the Queene *Dyer, fo.* 247. *pl.* 76. See 12. *H.* 4 1. *&* 2. *Br. Taile* 10.

A Rent is granted in Taile, whether the Grantee may make it an Annuity, or not; because he seemes to have an election *secundum formam doni*, to take it as a Rent Charge, or as an Annuity; and the Statute *De donis conditionalibus ses*, that *Voluntas donatoris in carta sit manifeste expressa de cætero observetur*; and his will is observed by making it an Annuity or a Rent Charge; for he gave him by the Grant such an impli-

implicit power. To this it may be said, That if he might at his Election make it an Annuity, then it were no more an Intaile, but a Fee conditionall as at Common Law, and then after Issue had, he may alien, and barre the Issue, which seemeth contrary to the will of the Donor, *ideo Quære.*

Tenant in Taile makes a Lease for yeares, to commence after his death, rendring Rent, the Issue accepts the Rent; whether this shall barre his Entry or not. *Quære. Dyer, fo. 279. a. pl. 7. fo. 69. a. pl. 30. fo. 246. a. pl. 69. Cooke* upon *Littleton, fo. 44. a. Pl. Com. fo.* 430.

Tenant in Taile makes a Lease for yeares, rendring 20 *s.* Rent, and after releases 19 *s.* and dies, and the Issue accepts 12 *d.* whether he may distraine for the 19 *s.* more, or not. *Quære.* 13. & 14. of the Queene *Dyer, f.* 304. *pl.* 53.

*Tenant*

*Tenant at will and sufferance.*

TEnant at will is ousted, and the Lessor disseised, whether by this the Lease at will be determined or not. *Quere.* 38. *H.* 6. 27. *Br. Tenant pro cupie, &c.* 6. 11. *E.* 4. 3. *Br. Tenant pro cupie, &c.* 11.

Whether Tenant at will may determine his will, a day or two before the Feast, in which he ought to pay his Rent, and thereby be excused of the payment of it, or not. *Quere.* 20. *H.* 7. *fo.* 65. *pl.* 6. *Keilway.* See *Cooke* upon *Littleton, fo.* 55. *b. letter. e.*

Whether a bargainee before Inrollment or Entry, shall be a Tenant at will, or not. *Quere.* See my *Reports, pa.* 62. *pl.* 97. *& pa.* 69. *pl.* 108. See *Littleton, fol.* 70.

*Tenant*

*Tenures.*

TEnant by Knight ſervice makes a gift in Taile, reſerving Fealty and Rent; whether the Donee in Taile ſhall hold by Knight Service, and the other Services eſpecially reſerved, or in Socage onely. *Quere. Cooke* upon *Littleton, fo.* 23. *a.* 33. *H.* 8. *Dyer, fo.* 52. *pl.* 3. See *Dyer, fo.* 45. *pl.* 1.

*Teſtaments.*

WHether a Feme Covert may make a Teſtament without agreement of her husband, of things in action, as Obligations, and the like, due to her before the Coverture, or not. *Quere.* 4. *H.* 6. 31. *Br. Teſtament, &c.* 9. 39. *H.* 6. 27. *Br. Teſtament* 10. 12. *H.* 7. 22. 23. 24. *Br. Teſtament* 11. 18. *E* 4. 11. *Br. Teſtament* 13. 3. *E.* 2. *Br. Teſtament* 21. See 4. *Rep. fo.* 61. *a.* 5. *Rep. fo.* 10. *Dyer, fo.* 354. *b. pl.* 34.

*Time.*

## Time.

WHether a Gardian of a Prison shall forfeit his Office for an escape in the night, or not. *Quære.* 5. E. 4. 26. *Br. Forfeiture, &c.* 64.

## Tryall.

A Man is mortally wounded in *France*, and dieth thereof in *England*, whether an Appeale in this case (for it is not punishable by the Common Law) doth lye upon the Statute of 1. H. 4. cap. 14 or not. *Quære. Cooke* upon *Littleton*, fo. 74. a. b.

An Earle or Lord of *Ireland* commits Treason in *Ireland* by open Rebellion, whether he may be arraigned and put to his Tryall in *England* for the offence, by the Statute of 26. H. 8. cap. 13. 32. H. 8. cap. 4. 35. H. 8. 2. or 5. E. 6. 11. or not. *Quære.* 19. and 20. of the Queene *Dyer*, fo. 360. pl. 6. *Cooke* upon

upon *Littleton*, *fo.* 261. *b.* See the 7. *Rep.* *fo.* 15. *b.*

*Tythes.*

A Parſon Leaſes parcell of his glebe Land for yeares, rendring Rent, whether the Leſſee ſhall pay Tythes or not. *Quere.* 30. *H.* 8. *Dyer*, *fo.* 43. *pl.* 21.

The Inhabitants of a Pariſh have a Chappell of Faſe, and a Cuſtome that thoſe within ſuch a Precinct ought to finde a Rope for the third Bell, and to repaire part of the Mother Church, in conſideration of which they have been freed from payment of any Tythes to the Mother Church, whether this be a good Cuſtome or not. *Quere.* See my *Reports*, *pa.* 91. *pl.* 151.

*Veſt*

## *Veſt and Deveſt.*

A Mannour was given to *S.* by Parliament, and after a Tenant who held of it by Knights Service, died, after *S.* was attainted of Treaſon, and the firſt Act reverſed in all points, the King ſeized the Mannour, and granted it to his mother, whether the Patentee ſhall have the ſaid Ward, or not, becauſe it was a thing veſted. *Quere.* 3. *H.* 7. 15. *Br. Parliament* 39. See 4. *H.* 7. 10. *Br. Parliament* 41. *Dyer, fo.* 25. *pl.* 163. See *Keilway, fo.* 135. *pl.* 86. 21. *H.* 6. 56. *Br. Preſentments, &c.* 22.

A Diſſeiſee of a Mannour ſuffers the Diſſeiſor to be in poſſeſsion untill a Ward fals, and after re-enters, who ſhall have the Ward. *Quere.* 2. *H.* 7. 2. *Br. Garde* 65. See *Dyer, fo.* 25. *pl.* 163. and the caſes immediatly before.

*View.*

*View.*

A *Precipe quod reddat* is brought against two, the one acknowledges the Action and the other demands the View; whether he ſhall have it, or not. *Quære.* 14. *H.* 6. 5. *Br. Dilatories* 9. and *View* 68.

*Villeinage and Villeine.*

A Freeman marries a Nieſe, whether this be an Enfranchiſement for ever, or for life onely. *Quære.* The Lad marries his Nieſe, whether this be an Enfranchiſement for ever, or no. *Quære.* See *Title Enfranchiſement.*

*Voucher.*

THe Tenant vouches *A.* who is returned dead, upon the Writ of Summons; whether he may now vouch in another Line, or not. *Quære.* 41. E.

41. E. 3. 28. *Br. Counterplea de Voucher* 56. and *Br. Voucher* 18. 43. E. 3. 3. *Br. Voucher* 21.

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*Use and Uses.*

A Man in consideration of marriage, covenants, That immediately after his death, his Land shall inure and remaine to his Sonne, whether this raises a use immediately to the Sonne, or not. *Quære.* 34. and 35. *H.* 8. *Dyer, fo.* 55. *pl.* 3. and 4. *Mich.* 1. *M. Dyer, fo.* 96. *pl.* 41. *Dyer, fo.* 162. *pl.* 48. and 49. *fo.* 235 *pl* 20, 21. *fo.* 166. *pl.* 8. and 9. *fo.* 325. *pl.* 37. and *fo.* 190. *pl.* 18.

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*Wager of Law.*

A Man brings Debt upon a Recovery in ancient Demesne which is a Court Baron; whether the Defendant may wage his Law, or not. *Quære.* 34. *H.* 6. 49. *Br. Court Baron, &c.* 1. *Leygager* 11. and *Record, &c.* 8. 1. *H.* 7. 25. *Br. Leygager* 105. See my *Reports, pa.* 15. *pl.* 35.

By

By the Customs of *London* a man cannot wage his Law for bourding, but whether in an Action brought at *Westminster* he shall have his Law, or not. *Quære* See *Title Customes* 1.

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*Warde.*

A Man of *non sane memory* makes a Feoffement and dies, his Heire recovers by a *Dum non fuit compos mentis*, whether he shall be in Warde or not. *Quære.* 7. *H.* 4. 12. *Br. Garde* 24.

Disseisee of a Mannour suffers the Disseisor to continue possession till a Warde fals, and after re enters; who shall have the Warde *Quære.* 2. *H.* 7. 2. *Br. Garde*, 65. See *Keiway*, *fo.* 111 *pl.* 83.

A Mannour was given to *S.* by Parliament, and after a Tenant which held of it by Knights Service died, after *S.* was attainted of Treason, and the Act reversed by Parliament in all points, the King seized the Mannour,

and granted it to his mother; whether the Patentee shall have the Ward, or not. *Quere.* 3. *H.* 7. 15. *Br. Parliament*, 39. See 4. *H.* 7. 10. *Br. Parliament* 41. See *Title Vest & Devest.*

Tenant in Socage deviseth by his will, the custody of his Heire apparent within age to *B.* whether this shall barre the Gardian in Socage, or not. *Quere. Keilway, fo.* 186. *pl.* 1.

A man seized in Fee before the Statute of 27. *H.* 8. infeoffes *B.* in Fee, to the use of him and his wife, and the Heires of their two bodies ingendered, and for default of such Issue, to the use of the Feoffer and his Heires in Fee, after the Statute they have Issue, the husband dies, the Issue within age; whether he shall be in Ward during the life of his mother, or not. *Quere.* 3. & 4. *P. & M. Dyer, fo.* 137. *pl.* 6. See 28. *H.* 8. *Dyer, fo.* 7. *pl.* 11.

*Warranty.*

WHether a man may grant a Rent *de novo* out of Land for life, or &c. with warranty, becauſe there can be no Title precedent to the Rent. *Quære.* 2 *H.* 4. 13. 30. *H.* 8. *Dyer, fo.* 42. *Temps. E.* 1. *Admeaſurement* 16. 32. *E.* 1. *Voucher*, 294. 30 *E.* 1. *Exchange* 16, 92 *E.* 4. 15. *E.* 4. 9. 29. *Aſſ.* 13.

A man infeoffes another of an Acre of Land with Warranty, and dieth ſeized of another Acre, having Iſſue a Sonne and a Daughter by one venter, and a Sonne by another, the eldeſt Sonne entreth and dieth, the Land diſcends to the Sifter; In this caſe the Warranty diſcendeth on the Sonne, and he may be vouched as Heire, and the Sifter as Heire of the Land; in which caſe the Sonne and Heire by the Common Law having nothing by diſcent, the whole loſſe of the recovery in value lieth upon the Heire of the Land, albeit he be no

Heire to the Warranty. Then put the case that there is a Warranty Paramount, who shall deraigne that Warranty? and to whom shall the recompence in value go? *Quære. Cooke* upon *Littleton, fo.* 376. *b. Pl. Com. fo.* 515.

Land was devised to the Father for life, the remainder to the next Heire Male of the Father, and to the Heires Males of his body, the Devisor dies, the Father infeoffed *B.* with Warranty; by the Feoffement the contingent remainder is destroyed, but whether the Warranty shall binde the remainder, or not. *Quære.* 1. *Rep. Archers Case.*

A Servant sels Clothes, and warrants them; whether deceit lies against him, or not. *Quære.* The sale being the sale of the Master, and the warrant the warrant of the Servant. 11. *Hen.* 4. 8. *Br. Deceit,* 29. and *Garranty* 61.

A man knowing a thing to be corrupt and naught, sels it, whether

Deceit lies againſt him for the knowledge, without Warranty, or not. *Quære.* 20. *H.* 6. 34. Br. *Deceits*, 21. 9. *H.* 6. 53. Br. *Garranty* 93.

*Waſte.*

IF a man fix a Furnace or Fats *in medio domus*, and not to the wals, or a poſt in the Land not to the wals, he may take it away within the Terme; but if he ſuffer it till the Terme be ended, the Leſſor ſhall have it; and the taking of them by the Termer within his Terme is not waſte, for the houſe is not impaired by it, by *Kings Mile Juſtice*, and *Grevil* Serjeant, *quod nullus negavit. Tamen Quære.* 21. *H.* 7. 26. Br. *Chattels, &c.* 7. See Br. *Chattels, &c.* 11.

Tenant for yeares commits waſt, and after ſurrenders to him in the reverſion, who accepts it, excepting the waſte, whether an Action of waſte lies, or not. *Quare.* 19. *H.* 6. 66. Br.

66. *Br. Waste* 86. 14. *H.* 8. 10, 11. *Br. Waste* 95. 23. *H.* 8. *Br. Waste* 138. 14. *H.* 6. 14. *pl.* 48. See *Cooke* upon *Littleton*, *fo.* 285. *a.*

A man makes a Lease for life of a House and Land, which House was ruinous at the time of the Demisee made, the Lessee cuts downe Trees to repaire it, whether this be a justifiable waste, or not. *Quære.* 12. *H.* 8. 1. 29. *H.* 8. *Dyer*, *fo.* 36. *a. Cooke* upon *Littleton*, *fo.* 53. *a. letter*, *g.* and *fo.* 55. *b. letter*, *e.*

FINIS.